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THE  
**Nuisances Removal Acts**  
FOR ENGLAND,

(18 & 19 Vict. c. 121, and 23 & 24 Vict. c. 77.)

WITH  
CASES, INTRODUCTORY COMMENTS,  
AND FORMS.

Fourth Edition.

BY  
DAVID KEANE,  
BARRISTER-AT-LAW.

London:  
SHAW AND SONS, FETTER LANE,  
Law Printers and Publishers.

1860.

Price]

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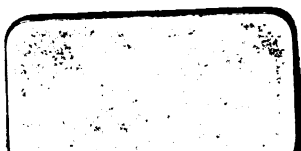
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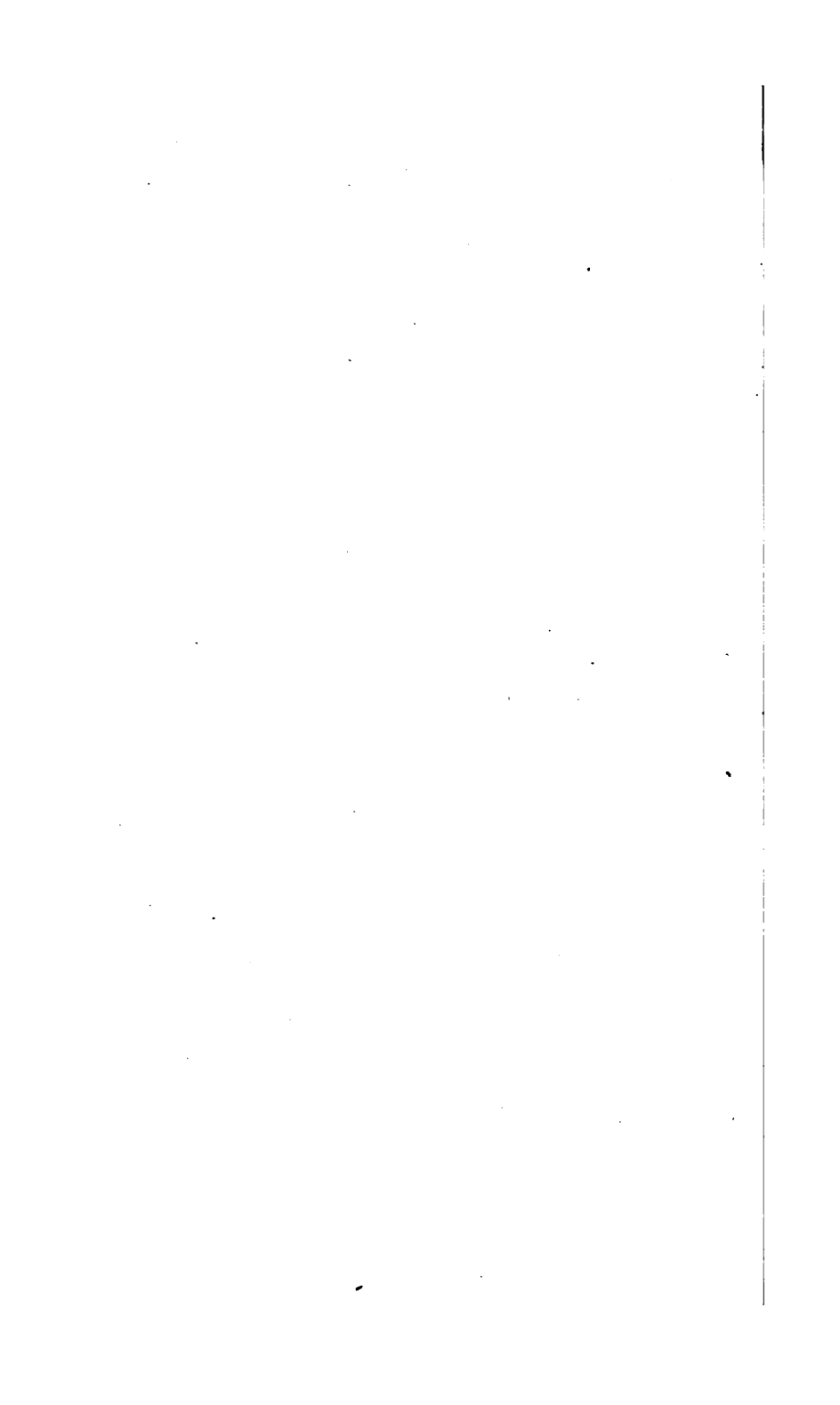
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INTRODUCTION  
TO THE  
NUISANCES REMOVAL AMENDMENT ACT,  
1860.

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AFTER the greater part of the contents of this volume had been printed and published the legislature thought right to pass an Act "To amend the Acts for the Removal of Nuisances and the Prevention of Diseases," to which the royal assent was given on the 6th of August, 1860.

The Act, on the face of it, is divided into three parts:—a Preamble; a part headed "Nuisances Removal;" and a part headed "Diseases Prevention." The preamble declares that the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and ought to be amended as thereafter-mentioned.

Then follows the part headed "Nuisances Removal," which treats of the local authority; the property in, and the protection and the repairs of, wells and fountains open to the use of the inhabitants of a place; and the appointment of inspectors of nuisances.

Then commences the part headed "Diseases Prevention," which treats of the local authority for executing the "Diseases Prevention Act, 1855;" the providing carriages for conveyance of infected persons; the procuring and paying for sanitary reports; and certain matters relating exclusively to

“The Nuisances Removal Act, 1855,” namely, to the power of an inhabitant of a parish or place to obtain the removal of a nuisance existing on private premises on his own mere application to a magistrate, without the local authority,—and, the capacity of justices, notwithstanding that they be members of the body declared to be the local authority, or have an interest as contributors to the fund for defraying the expenses of such body, to act in cases arising under “The Nuisances Removal Act, 1855.”

The main object of the part relative to Nuisances Removal would appear to be to simplify the complex provisions of the former Act relative to the local authority. To effect this the 3rd, 6th, and 7th sections of the Act of 1855 are repealed, and others are substituted, the general effect of which is that the local authority will, in almost all places, be one of the six following bodies:—

The Local Board of Health.

The Council of a Borough.

The Trustees or Commissioners under an Improvement Act.

The Board of Guardians of the Parish or Union.

The Overseers of the Poor (sec. 2.)

The exceptions are, the cities of London and Oxford, the borough of Cambridge (sec. 2),—the district to which the Metropolis Local Management Act (18 & 19 Vict. c. 120) applies (sec. 6)—and, lastly, places in which there subsisted on the 6th of August, 1860, a highway board, or a nuisances removal committee chosen under the Act of 1855, then employing or joining with some other local authority in employing a sanitary inspector or

inspectors, which elects to continue to act, and does not fail, for two months in any year, to appoint or employ a sanitary inspector or inspectors (sec. 3). If such exception arises by reason of a nuisances removal committee, such committee may be annually chosen as if the Act of 1860 had not passed; but if such highway board or nuisances removal committee fail for two months in any year to appoint or employ a sanitary inspector or inspectors, or such nuisances removal committee be not annually well chosen according to the Act of 1855, the last-named Act is wholly and finally repealed in respect of such place, and the local authority is to be appointed as if on the 6th of August, 1860, no such highway board or nuisances removal committee had been subsisting therein (sec. 3).

The 6th section of the 18 & 19 Vict. c. 121 (*post*, p. 6), is absolutely repealed by the 2nd section of the Act under consideration, and thus all questions arising out of extra-parochiality, which can hardly be said to have been disposed of by the 20 Vict. c. 19 (*post*, p. 113), are got rid of.

The change in the composition of the local authority has led to a corresponding change in the funds out of which the charges and expenses of the local authority are to be defrayed (sec. 4). The object of the legislature appears to be to throw the burthen, in places in which there is no local board of health, council, body of trustees or commissioners, on the poor rates; either directly, or by means of an addition to be made to the rate for the relief of the poor, to be raised and paid in like manner as money expended for the relief of the

poor. This addition, so to be raised and paid, is to be made in three cases, that is to say,—

When a board of guardians for a union is the local authority for the whole union.

When the board of guardians for a union is the local authority for part only of any place maintaining its own poor, together with the whole or part of any other such place,—in every such part of a place.

When any board of guardians or overseers are the local authority for part only of any place maintaining its own poor.

By “addition to be made to the rate for the relief of the poor thereof,” must be understood, it would seem, a separate charge, in a distinct column of the poor-rate, headed “Nuisances Removal Act charges,” or to that effect, made on the persons and in respect of the property liable to contribute.

What general principle is to be adopted in apportioning the charges and expenses of a local authority among the parishes or places subject to the jurisdiction of the local authority does not appear expressly; but as, in the case of a board of guardians for a union acting for the whole of such union, the charges and expenses are to be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes “for which the expense has been incurred” (sec. 4), it may be inferred that apportionments are to be so made that each place defray the expenses which have been incurred for that place.

*Nuisances Amendment Act, 1860.*

*e*

On collating the second, third, fourth, fifth and sixth sections of the Act it will appear that the several districts, local authorities, and corresponding funds out of which all charges and expenses incurred by the local authorities in executing "The Nuisances Removal Act, 1855," are to be defrayed, will be as follows :—

District.	Local Authority.	Fund.
Place within which the Public Health Act is or shall be in force.	Local Board of Health.	District rates.
Place wherein a Council exists or shall exist, except city of London and the liberties thereof, the city of Oxford, and the borough of Cambridge.	Mayor, Aldermen, and Burgesses, by the Council.	Borough fund or borough rate.
City of London and the liberties thereof.	Commissioners of Sewers for the time being.	Rates and funds administered by the Commissioners of Sewers for the city and liberties.
City of Oxford - -	Commissioners acting in execution of the Local Improvement Act in force.	Fund out of which expenses of cleansing the streets are payable, as annual charges and expenses.
Borough of Cambridge -	—	—
Place in which there is no Local Board of Health or Council, and where there are or shall be trustees or commissioners under an improvement Act.	Trustees or Commissioners acting in execution of the powers of the improvement Act.	Rates levied for the purposes of improvement under the improvement Act.
Place maintaining its own poor where there is no Local Board of Health, Council, Body of Trustees or Commissioners acting under an improvement Act, but there is a Board of Guardians of the Poor for such place.	The Board of Guardians for the place.	Rates for the relief of the poor of the place.

District.	Local Authority.	Fund.
Place maintaining its own poor, in which there is no Local Board of Health, Council, Body of Trustees or Commissioners acting under an improvement Act, nor Board of Guardians, if such place is within a union.	The Board of Guardians for the union.	<p>If Board of Guardians local authority for whole union: and either no committee appointed or only one committee for all the places. } Addition to rate for the relief of the poor of parish or parishes for which expenses incurred; the money to be raised and paid as money expended for the relief of the poor.</p> <p>If Board of Guardians local authority for two or more of the places in the union, but not for all; or for all, but a committee has been appointed for less than all. } The poor-rates of the places for which the Board is the Local Authority.</p> <p>If Board of Guardians Local Authority for one only of the places in the union. } Rate for the relief of the poor of the place.</p>
Place maintaining its own poor not within a union, and in which there is no Local Board of Health, Council, Body of Trustees or Commissioners acting under an improvement Act or Board of Guardians.	The overseers of the poor.	Rate for the relief of the poor of the place.

*Nuisances Amendment Act, 1860.*

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District.	Local Authority.	Fund.
Place not maintaining its own poor in which there is no Local Board of Health, Council, Body of Trustees or Commissioners under an improvement Act, but which is in a parish for which there is a Board of Guardians.	The Board of Guardians for the parish.	Addition to be made to rate for the relief of the poor, and to be raised and paid in like manner as money expended for the relief of the poor.
Place not maintaining its own poor, nor within a parish having a Board of Guardians, and in which there is no Local Board of Health, Council, Body of Trustees or Commissioners under an improvement Act, but which is within a union.	Board of Guardians of union.	Addition to be made to rate for the relief of the poor, and to be raised and paid in like manner as money expended for the relief of the poor.
Place not maintaining its own poor, nor within a union or a parish having a Board of Guardians, and in which there is no Local Board of Health, Council, Body of Trustees or Commissioners under an improvement Act.	Overseers of the poor.	Addition to be made to rate for the relief of the poor, and to be raised and paid in like manner as money expended for the relief of the poor.
Place where, on 6th of August, 1860, a Nuisances Removal Committee well chosen under the 18 & 19 Vic. c. 120 subsisted, and employed or joined with other local authorities in employing a sanitary inspector or inspectors.	Nuisances Removal Committee not failing for two months in in any year to appoint or employ a sanitary inspector or inspectors, and annually chosen according to the Nuisances Removal Act, 1855.	Rate for the relief of the poor of place.



District.	Local Authority.	Fund.
Place where, on 6th of August, 1860, Highway Board subsisted and employed or joined with other local authorities in employing a sanitary inspector or inspectors.	Highway Board not failing for two months in any year to appoint or employ a sanitary inspector or inspectors.	Highway rates, or any fund applicable in aid or in lieu thereof.*
Place where the Metropolitan Local Management Act, 18 & 19 Vict. c. 120, is in operation.	Vestry or district board.	Rates or other funds applicable to purposes of vestry or district board.

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\* The 4th clause makes no provision for defraying the expenses of the highway board electing to continue to act; and the 7th section of the Act of 1855 is repealed; but if the highway board may act, there is, it must be presumed, an implied authority to defray the costs and charges from the funds applicable to the purposes of such board.

Under the Act of 1855, the local authority was empowered to appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects, execute that Act, whereof two should be a quorum (18 & 19 Vict. c. 121, s. 5). Under the Act of 1860, this power may be exercised by a board of guardians for a union, such board being a local authority, by appointing a committee or committees of their own body to act in one or more of the parishes or places for which such board is the local authority. Every such committee may, within the place or places for which it is appointed, execute the Act of 1855 in all respects, unless the power of such committee be expressly limited by the terms of its appointment. When but one such committee is appointed, no alteration is to take place in the mode of contributing towards and paying the charges and expenses of the local authority; but if one or more such committees be appointed for a place or places, not being all the places under the jurisdiction of the board of guardians of the union, as such local authority, the expenses of every such committee are to be paid out of the poor rates of the place for which it is appointed, and the expenses of the board or local authority for the places for which no committee is appointed, out of the poor rates of the last-mentioned places.

Under the 9th section of the Act of 1855, the local authority was bound to appoint or employ or join in appointing or employing a sanitary inspector or inspectors. This provision is repealed by the 2nd section of the Act of 1860; and the 9th section of the latter Act leaves it to the option

of the local authorities to appoint or employ inspectors of nuisances. The local authority are to appoint or employ severally; and they may make such payments as they see fit for the remuneration and expenses of such inspectors.

The 7th section of the Act of 1860, vests in the local authority all wells, fountains and pumps provided under sec. 50 of "The Public Health Act, 1858," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation, other than officers of such place, and imposes on the local authority the duty from time to time to cause to be kept in good repair and condition, and free from pollution, all wells, fountains and pumps vested in them under the Act, and empowers them to keep in good repair and condition, and free from pollution, other wells, fountains and pumps dedicated to or open to the use of the inhabitants of such place.

The conservation of wells, fountains and pumps, is further promoted by the 8th section, which imposes a penalty not exceeding 5*l.*, recoverable upon summary conviction before two justices, for any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain or pump is polluted or fouled; and a further sum, not exceeding 20*s.*, for every day during which such offence is continued after written notice from the local authority in relation thereto. This does not extend to any offence against the 23rd section of the Act of 1855, which imposes a penalty of £200 for causing water to be corrupted by gas washings.

The duties of the local authority in respect of the removal of nuisances remain as before ; but the 13th section of the Act of 1860, empowers any inhabitant of any parish or place to make complaint to a justice of the peace of the existence of any nuisance on any private premises, and thereupon, without any entry to ground proceedings, the course prescribed by the 12th section of the Act of 1855, in the case of a complaint by a local authority, may be followed by the justices, and any order made by them will be attended with the like consequence and penalties for disobedience, and be subject to the like appeal as any order made by justices under the said 12th section. The costs, however, are in the discretion of the justices, who, also, may adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and require the admission or authorize the entry into such premises of any constable or other person or persons, who thereupon may enter and act as the local authority might under a like order made by any justices under sec. 11 of the Act of 1860. The justices may further empower any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such orders in like manner as a local authority obtaining the like order might do under the Act of 1855, and charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

The 15th section in substance incorporates the interpretation clause (sec. 2) of the Act of 1855.

The 16th section enables a justice of the peace to act in cases arising under the Nuisances Removal Act, notwithstanding that he may be a member of a body declared to be the local authority to execute that Act, or to be a contributor, or liable to contribute, to any rate or fund out of which it is by the Act of 1860 provided that all charges and expenses incurred in executing the Act of 1860, and not recovered as therein provided, shall be defrayed,—unless, such justice of the peace shall be objected to at the hearing of any complaint or charge.

It is hoped that the foregoing remarks will enable the reader to understand the effect of the Act of 1860 on that of 1855, and to apply the observations of the writer in the following pages.

INTRODUCTION  
TO THE  
NUISANCES REMOVAL ACT FOR ENGLAND,  
1855.

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It is proposed to consider in the following pages the provisions of an Act intituled "An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849," (18 & 19 Vict. c. 121,) which received the royal assent on the 14th of August, 1855. The 46th section of the Act authorizes the citing it by the following words, "The Nuisances Removal Act for England, 1855."

The Act is composed of a preamble, two introductory sections, and 44 enacting sections.

The preamble declares the defectiveness of the provisions of "The Nuisances Removal and Diseases Prevention Acts, 1848 and 1849;" the expediency of repealing them as far as relates to England; and the expediency of substituting other provisions more effectual for the objects of the recited Acts.

The first of the introductory sections repeals former Acts, and determines the effect of the repeal. The second of the introductory sections defines the meanings of the words and expressions used in the Act.

The 44 enacting sections are divided into three parts.

The first part comprises sections 3, 4, 5, 6, 7, 8, 9, 10, and 11; provides for the constitution of a local authority to execute the Act, and for the expenses of executing it; describes the nuisances that may be dealt with under the Act, and confers powers of entry for the purposes of the Act.

The second part comprises sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, and provides for the removal of nuisances.

The first twenty sections of the Act deal with private nuisances only, and the proceedings and costs incidental to their abatement. The Act then proceeds to deal with public nuisances: ditches near any highway (sec. 21); open ditches (22); allowing washings in the manufacture of gas to flow into streams (sec. 23); selling unwholesome meat (sec. 26); noxious trades (sec. 27). See *Reg. v. The Nuisances Removal Committee of Middleton*, 28 L. J., M. C. 45, per Erle, J.

The third part treats of procedure under the Act, and comprises the fifteen sections, commencing with the 31st and ending with the 45th.

The 46th section is the last, and, as has been observed, provides a form for citation.

A schedule of eleven forms, marked, according to their order, by the first eleven letters of the alphabet, is appended.

### *Acts repealed.*

The first section enacts :—

From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to *England*: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts shall continue and be as effectual as if the said Acts had not been repealed (sec. 1).

The Acts of 1848 and 1849, therefore, are only repealed as far as relates to England. The repeal is further restricted in respect of proceedings commenced or taken, and in respect of contracts or works undertaken. Proceedings commenced or taken, but not

completed, under the Acts of 1848 and 1849, before the 14th of August, 1855, may, expressly, be proceeded with under these Acts. Without this provision, all proceedings under these Acts, commenced but not completed, would have fallen to the ground. *Rex. v. M'Kenzie*, R. & Ry. 429; *Surtees v. Ellison*, 9 B. & C. 650; *Reg. v. Inhabitants of Denton*, 21 L. J., M. C., 707. Proceedings under these Acts cannot, however, be commenced after the 14th of August, 1855, and so offences against them, not being offences at common law, or the subject of proceedings commenced but not completed at that date, have become punishable.

In respect of existing contracts, it was clearly the purpose of the legislature to maintain them in full force. The language used, however, is not very happy. The true interpretation seems to be that all contracts undertaken by virtue of the repealed Acts, whether express, or to be implied from the execution of works, are to continue and be as effectual as if those Acts had not been repealed.

It is to be observed, that the Smoke Nuisance Abatement (Metropolis) Act, 1853, (16 & 17 Vict. c. 128,) provides that other nuisances besides smoke may be proceeded against at the instigation of one of Her Majesty's principal Secretaries of State; but 19 & 20 Vict. c. 107, an Act to amend 16 & 17 Vict. c. 128, after reciting that by 18 & 19 Vict. cc. 120, 121, the local authorities are entitled to originate proceedings for the abatement of such nuisances, enacts that no proceeding shall be taken under 16 & 17 Vict. c. 128, against other nuisances besides smoke, unless it shall appear to the Secretary of State that the local authorities fail to proceed actively and impartially in noticing and suppressing such nuisances. The jurisdiction and power



to abate nuisances given by these and certain other Acts is not taken away by this Act. See (sec. 43), *post*, p. 58.

*Meaning of Terms.*

The second section enacts as follows :—

In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meaning be repugnant to or inconsistent with the context ; (that is to say,) the word “ place ” includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township or hamlet ; the word “ guardians,” includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cognizance of any such officer arises ; the word “ borough,” and the expressions “ mayor, aldermen, and burgesses,” “ council,” and “ borough fund,” have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough-reeve, or other chief officer, and burgesses, or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies ; the expression “ Improvement Act ” means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes ; the word “ owner ” includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of Chancery or under any order thereof, or who would receive the same if such property were let to a tenant ; the word “ premises ” extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private ; the word

"parish" includes every township or place separately maintaining its poor, or separately maintaining its own highways; the expression "quarter sessions" means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word "person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole; and the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district (sec. 2).

In this section the operative words are, "means," "includes," "extends," and "apply to." The effect of the word "means" is to limit, that of all the other words to enlarge the interpretation.

In places where the Acts for the regulation of municipal corporations are in operation, the words of the second section, "borough," "mayor, aldermen, and burgesses," "council," "borough fund," are to have the meanings, and no other, which in those Acts they have.

It is clear from the context that the expression "governing bodies" points at depositories of powers more large and general than are conferred by statute for a specific object only, such as the relief of the poor, the repair of the highways, and the like.

An Union is not a "place" within the meaning of the Act.

## PART I.

### THE LOCAL AUTHORITY.

*Of the Constitution of the Local Authority for the execution of the Act,—the Expenses of its execution,—the description of Nuisances that may be dealt with under it, and the power of Entry for the purposes of the Act.*

Departing from the order observed in the Act itself, let us first discover the description of nuisances that may be dealt with under it.

The eighth section is in these words :—

The word “ nuisances ” under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby (sec. 8.)

The section professes to describe what the word “ nuisances ” shall include, and not merely what the term shall mean. The effect of the section, therefore, is to prevent any doubt about the applicability of the Act to the several species of nuisance expressly set

forth in it. With regard to other species of nuisance, it will be material to recollect always that the title of the Act contains the expressions "nuisances removal" and "diseases prevention," and that as the averting injury to the health is the real object, its powers ought not to be applied except for that purpose. The preservation of the public health had been considered by the legislature of such paramount importance as to justify enactments containing enormous arbitrary powers; and it was to prevent the abuse of these powers that the checks provided by the statute now under discussion were interposed (see per Sir J. Stuart, V. C. *Tinkler v. The Board of Works for the Wandsworth District*, 3 Jur. N. S. 1294; 21 J. P. 757, s. c.) This position, that the powers of the Act ought not to be applied except for averting injury to health, is fortified by the proviso introduced for the protection of commercial establishments. "Any accumulation of deposit which is a nuisance,"—which it may be by mere offensiveness, "or injurious to health," is included in the word "nuisances," and is, in general, punishable under the Act. Such accumulation or deposit, however, may be "necessary for the effectual carrying on of any business or manufacture." If it is so necessary, it shall not be punishable under this Act if it be made out to the satisfaction of the justices, 1st, "that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture;" and 2nd, "that the best available means have been taken for protecting the public from injury to health thereby." They, therefore, who have to comply with the first condition, must bear in mind that the keeping must be necessary, and not merely convenient or advantageous. In endeavouring to satisfy the second condition, the manufac-

turer must consider that he is to purchase immunity from summary proceedings under this Act by using "the best available means" to protect the public from injury to health. It will not be enough to adopt such precautions only as are used in the place or district among persons carrying on the same business or manufacture, if it has been ascertained that there are better, which are available. The best available means must be adopted. *Scholefield v. Schunch*, 19 J. P. 84.

In interpreting the word "available," it is probable that magistrates will pay more attention to scientific than pecuniary difficulties. Let it not be supposed, however, that the proviso to this eighth section confers a conditional permission to have on the premises of a manufacturer, for the effectual carrying on of his business or manufacture, an accumulation or deposit which is a nuisance, or injurious to health. The proviso only determines the condition by compliance with which the manufacturer is to be dispensable under this Act. All other liabilities remain as before (s. 49).

It will be observed that the word "premises" is used. It must be interpreted by the second section, that is, as extending to "all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private." The word "tenements," moreover, must not be forgotten, when it becomes necessary under other sections to determine who is occupier, and whether occupier or owner is to be proceeded against.

The eighth section uses several times the expression "injurious to health." The proviso has the phrase "protecting the public from injury to health." It is to public nuisances, therefore, that the Act applies, that is, to nuisances which more or less obtrude on

and affect every one within range of their operation. *Soltan v. De Held*, 2 Sim. N. S. 133.

The remedy given by the Act is, of course, in many instances cumulative. Thus keeping swine and pig-styes so as to be a nuisance to the inhabitants was a matter for which 11 & 12 Vict. c. 63, s. 69, gave a remedy as well as this Act. *Digby v. West Ham Local Board of Health*, 22 J. P. 304.

The machinery devised for carrying the Act into execution is called "The Local Authority." It varies in different districts; and there is a corresponding variation in the fund out of which the charges and expenses incurred in executing the Act, and not recovered as by the Act provided, may be defrayed.

The several local authorities are enumerated below. With respect to the first, the local board of health, which sec. 3 provides shall be the local authority in any place within which the Public Health Act is or shall be in force, by the 6th section of the Local Government Act, 1858, (21 & 22 Vict. c. 98,) it is enacted that "local boards" under that Act shall, subject to that Act, have all the powers, rights, duties, and liabilities of local boards of health constituted under the Public Health Act, 1848, and the Acts incorporated therewith. In places therefore wherein the Local Management Act 1858, is adopted, it seems that the local authority now is the local board. The Local Government Act, 1858, does not extend to Scotland or Ireland, and may not be adopted within the limits of the Act for the better local management of the metropolis, 18 & 19 Vict. c. 120 (s. 3); it is to be deemed part of the Public Health Act, 1848 (s. 4), and takes effect from 1st Sept. 1858, in places where the Public Health Act, 1848, is already in force wholly or partially: provided always, that nothing in the Act

shall affect the qualification and number of the members of local boards of health in such places, or any power, right, privilege, or liability of any board of improvement commissioners exercising powers of the Public Health Act, 1848, or of any town council or local board of health, under or by virtue of any general or local Act of Parliament other than the said Public Health Act (s. 5). *See R. v. Mayor, &c., of Gloucester*, 23 J. P. 340.

On collating the third, sixth, and seventh sections it will appear that the several local authorities, districts, and corresponding funds are as follows :—

District.	Local Authority.	Fund.
Place within which the Public Health Act is or shall be in force.	Local Board of Health.	District rates.
Place wherein a Council exists or shall exist, except city of London and the liberties thereof, the city of Oxford, and the borough of Cambridge.	Mayor, Aldermen and Burgesses, by the Council.	Borough fund or borough rate, or if there be an improvement Act for the borough, administered by the Council, the rates levied thereunder, applicable to the purposes of such improvement Act.
City of London and the liberties thereof.	Commissioners of Sewers for the time being.	Rates and funds administered by the Commissioners of Sewers for the city and liberties.
City of Oxford - - -	Commissioners acting in execution of the Local Improvement Act in force.	Fund out of which expenses of cleansing the streets are payable, as annual charges and expenses.
Borough of Cambridge -	—	—
Place in which there is no Local Board of Health or Council, and where there are or shall be trustees or commissioners under an improvement Act.	Trustees or Commissioners acting in execution of the powers of the improvement Act.	Rates levied for the purposes of improvement under the improvement Act. [If none, rates or funds applicable to the relief of the poor of the parish or place.]

District.	Local Authority.	Fund.
Place in which no Local Board of Health, nor Council, Body of Trustees or Commissioners, and in which there is or shall be a Board for the repair of the highways of such place.	Board for the repair of the highways of the place.	Highway rates or any fund applicable in aid or in lieu thereof. [If none, rates or funds applicable to the relief of the poor of the parish or place.]
Place where there is no such Local Board of Health, Council, Body of Trustees or Commissioners, or a Highway Board, and there is a Nuisances Removal Committee.	The Nuisances Removal Committee.	—
Place where there is no such Local Board of Health, Council, Body of Trustees or Commissioners, Highway Board or Nuisances Removal Committee, and wherein there is a Board of Inspectors for Lighting and Watching, under the 3 & 4 W. 4. c. 90.	Board of Inspectors for Lighting and Watching under the 3 & 4 W. 4, c. 90, and the surveyor of highways.	Rates for lighting and watching. [If none, rates or funds applicable to the relief of the poor of the parish or place.]
Place in which there is no such Local Board of Health, Council, Body of Trustees or Commissioners, or Highway Board, or Nuisances Removal Committee, or Board of Inspectors for Lighting and Watching, and which is co-extensive with a parish or place where rates or funds applicable to the relief of the poor are collected or arise.	The guardians and overseers of the poor and the surveyors of the highways in and for such place.	Rates or funds applicable to the relief of the poor of the parish or place.



District.	Local Authority.	Fund.
Part of parish or place, wherein funds for the relief of the poor are collected or arise, not subject to a Local Authority—being a Local Board of Health, Council, or Trustees or Commissioners under an improvement Act—having jurisdiction in the other part of such parish or place.	Guardians and overseers of the poor and the surveyors of highways in and for such place.	Highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded. [If more than one highway rate is collected, the proportion in which the parties or places, liable thereto, shall bear such charges and expenses, is to be settled by Local Authority; if any part of such excluded part is exempt from highway rate or rates, the charges and expenses of whole of excluded part are to be defrayed out of any district police rate or other rate, which by the 12 & 13 Vict. c. 6, may be raised and assessed upon such excluded part.]
Extra-parochial place not comprised under jurisdiction of any of the authorities above-mentioned (with population not less than 200 persons).	Nuisances Removal Committee.	Rate assessed by Local Authority on all such property as would be assessable to highway rate, if such a rate were levied therein.
Similar extra-parochial place (with population less than 200 persons).	The local authority of the adjacent place having the largest common boundary with such extra-parochial place.	Similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place.
Place where the Metropolis Local Management Bill shall be in operation (18 & 19 Vict. c. 120, s. 134).	Vestry or district board.	Rates or other funds applicable to purposes of vestry or district board.

In proceeding under the Act the extent of the area of the jurisdiction of the local authority must be carefully considered, for the proceeding before justices given by the twelfth section for the removal and prevention of nuisances is confined to cases where both the cause and effect of such nuisances exist within that area. *R. v. Cotton*, 28 L. J., M. C. 22. See also *R. v. Warner*, 27 L. J., M. C. 144.

"The Nuisances Removal Committee" is a committee for carrying this Act into execution, which, in any place where there is no local board of health, council, body of trustees or commissioners, or highway board, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of the surveyor or surveyors for the time being of such place, who shall be *ex officio* members. The first of such committees may be chosen at a vestry to be specially held for such purpose. Of such committee three shall be a quorum (sec. 3).

With regard to the execution of the Act in extra-parochial places, the 6th section enacts that "In extra-parochial places not comprised within any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a Nuisances Removal Committee, elected annually by the householders within the extra-parochial place. \* \* \* Extra-parochial places not so comprised as aforesaid, and *having a population of less than two hundred persons*, shall, for the purpose of this Act, be attached to, and form part of, the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority

under and for the purposes of this Act shall be given in such extra-parochial places, *and the householders within such places may attend such vestry meetings, and vote on such elections.*"

In a recent case, turning upon this section, the important question was raised whether the Act is applicable to an extra-parochial place where there are no inhabitants; and the Queen's Bench decided that it applies to all extra-parochial places, whether inhabited or not. The case referred to was stated upon a mandamus addressed to the defendants as the Nuisances Removal Committee of the township of Bootle-cum-Linacre, and the facts were these:—"The township is bounded towards the west by the sea shore at the mouth of the Mersey, below Liverpool. There is no evidence to define the precise boundary between the township and the sea shore, or to rebut the ordinary presumption that the portion of the sea shore between high and low water mark is extra-parochial. There is a covered sewer in the township which conveys water, filth and sewage from about fifty houses in the township, and the ditch, gutter, drain, or watercourse mentioned in the writ, and which is admitted to be a nuisance which cannot be rendered innocuous without laying down a sewer along the same or some part thereof, or instead thereof, runs from the mouth of the said covered sewer to the sea across the shore.

"The mouth of the covered sewer where the nuisance begins is situated at and on the line of high-water mark of ordinary spring tides, and is one hundred and eighty yards above the line of the medium high tides between the springs and neaps, and two hundred and fifty yards above the high-water mark of ordinary neap tides. The township of Bootle-cum-Linacre is the only adjacent place to this portion of the sea shore,

*and there are no houses or inhabitants on the sea shore."*

It was held that the extra-parochial place in question must be considered as within the township of Bootle-cum-Linacre for the purposes of the Act; that it was the intention of the legislature that all the extra-parochial places in the kingdom should be included in the jurisdiction given by the Act; and that a place where no population exists is within the provision applicable to an extra-parochial place where the population is less than two hundred. *R. (on the prosecution of the Earl of Derby) v. Gee and others*, 33 L. T. 183; 23 J. P. 374, s. c.

In the case above, the *Attorney-General v. Chambers*, 4 De G. M. & G. 206, 23 L. J., C. C. 662, and *R. v. Musson*, 27 L. J., M. C. 100, were recognized as deciding, the former the recognized boundary line upon the sea shore as between the crown and the subject; the latter case, that *prima facie* land on the sea shore between high and low water mark is extra-parochial.

The importance of this decision, by which many nuisances on the sea shore are brought within the jurisdiction of the Act, is a matter to be appreciated by all frequenters of English watering-places.

In such extra-parochial places as are mentioned above, and have a population of not less than two hundred persons, the householders within such places shall annually elect a Nuisances Removal Committee. The first election of such a committee shall take place at a meeting of such householders, summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place. Subsequent elections shall be held annually on some day in Easter-week, at meetings summoned by the chairman of the local authority for the year preceding.

In extra-parochial places *having a population of less than two hundred persons*, (which, in *R. v. Gee, sup.*, has been decided to mean all other extra-parochial places,) notice of vestry meetings, to be held in the place to which for the purpose of this Act they are attached, for the election of a local authority under and for the purposes of this Act, shall be given, and the householders (if any) within such extra-parochial places may attend such vestry meetings, and vote at such elections (sec. 6).

In a place having a vestry, notice of a vacancy in the Nuisances Removal Committee arising from death, change of residence, or otherwise, is to be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry and fill up such vacancy by election. Until such vacancy is filled up the remaining members of the committee may act in all respects as if their number were complete (sec. 4). Hence it would appear that, in a place having a vestry, residence is a necessary qualification of a member of "The Nuisances Removal Committee." It seems to be doubtful whether in extra-parochial places that qualification is to be required; but seeing that sec. 4 shows the qualification of residence to have been involved in the power to elect conferred by sec. 3, it may well be argued that it is similarly involved in the power conferred by sec. 6. It will, therefore, be more safe in law, as in point of prudence it will be more expedient, to maintain that qualification in the extra-parochial places as well as in the others. No provision is made for filling up vacancies in the committee for such an extra-parochial place.

The word "guardians," in the above table, means individual guardians for their respective parishes.

Power is given (sec. 5) to the local authority to

appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, two of such committee to be a quorum; and such local authority, or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints or take proceedings on their behalf. There seems, therefore, to be an implied authority for appointing a chairman, and this is borne out by the provision in sec. 6 for appointing a day in Easter-week for holding the election of members of the committee in extra-parochial places.

When the local authority has not the control of the rates or funds, the officer or persons having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or persons; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall include the costs of such distress and sale (sec. 7).

- The local authority in the first case of extra-parochial places mentioned above, and in the second, the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place, may levy and collect the sums so assessed in the same manner and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways (sec. 7).

The chief agent of the local authority is to be an officer called the Sanitary Inspector. Except in the case hereinafter mentioned, one or more such inspectors must be appointed or employed by a local authority, or by several local authorities jointly. The local authority is to appoint a convenient place for the office of the sanitary inspector, and allow him a proper salary on account of his employment. When local authorities join in the appointment or employment, they may apportion among themselves the payment of the salary or allowance. When, however, the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it is not necessary to appoint any other inspector under this Act; but the inspector acting in the execution of the improvement Act shall have all the powers, authorities, and privileges granted to any inspector under this Act (sec. 9). In such case the appointment of an inspector under this Act is not to take place unless the local authority deem it necessary.

To enable the local authority to discharge its duties, powers of entry on private premises for the purposes of the Act are conferred upon it. These powers are of three kinds: 1. To ground proceedings for the removal of nuisances; 2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act; 3. To remove or abate a nuisance in case of non-compliance with or infringement of an order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour under the powers and for the purposes of this Act (sec. 11).

To ground proceedings the local authority must have reasonable grounds for believing that a nuisance

exists on private premises (sec. 11). It appears (sec. 10) that the first step towards establishing such grounds is a notice of nuisance to the local authority by any of the following persons :—

Any person aggrieved by the nuisance :

The sanitary inspector, or any paid officer under the local authority :

Two or more inhabitant householders of the parish or place to which the notice relates :

The relieving officer of the union or parish :

Any constable or any officer of the constabulary or police force of the district or place :

And, in case the premises be a common lodging-house, any person appointed for the inspection of common lodging-houses.

In *Ex parte Bassett*, 7 E. & B. 280, 26 L. J., M. C. 64, s. c., which turns upon secs. 10, 12, and 14, it has been decided that where an order for abating a nuisance has been obtained, and the local authority are requested by a party aggrieved to enforce the order, it is not obligatory upon them to do so.

It is to be observed, however, that, in *Ex parte Bassett*, the order, made upon the complaint of the sanitary inspector of the local authority in that case, directed them to cleanse a drain upon premises in the occupation of an individual ; and the reason given for the decision is, that sec. 14 provides a specific remedy by imposing a penalty on the person disobeying the order. The same rule, therefore, does not seem to apply where the proceedings are under the 22nd section of the Act.

In *R. (on the prosecution of the Earl of Derby) v. Gee and others*, 23 J. P. 83, the contest in substance was, whether a sewer should be lengthened by the Earl, and at his expense, or by and at the expense of the



Nuisances Removal Committee within the jurisdiction of which it existed. The Earl obtained a mandamus, which contained a recital, not denied by the Nuisances Removal Committee, that the nuisance in question could not and cannot, in the opinion of such committee, be rendered innocuous without the laying down of a sewer (see sec. 22, *post*, p. 37); and that the said committee had been required by the Earl, the owner of the land where the nuisance existed and of the houses drained by the existing sewer, to lay down such sewer; and commanded the committee to lay down, in compliance with the provisions of the Act, such a sewer or other structure as might be sufficient to render the nuisance innocuous, or show cause to the contrary. The Nuisances Removal Committee resisted the writ; and it is to be inferred from the note of the case that, before the writ was applied for, an order of magistrates had been obtained, under sec. 12, directing the Earl himself to abate the nuisance, and that, except in paying the costs, he had not obeyed that order. The Queen's Bench nevertheless held the return to be bad; and judgment was ultimately given for the crown. See *R. (on the prosecution of the Earl of Derby) v. Gee and others*, 33 L. T. 183, and 23 J. P. 374, referred to *ante*, p. 15, under sec. 6, and *post*, p. 39, under sec. 22.

The notice may be in Form (B.) in the schedule to the Act.

Before taking cognizance under the Act of any such nuisance, entry on the premises must be made as in the Act is provided, or in conformity with any improvement Act under which the inspector has been appointed (sec. 10). The local authority, or any of their officers, having reasonable grounds for believing that a nuisance exists on any private premises, may make demand, by themselves or their officer, on any person having

custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening (sec. 11). If admission be given, the inspection must be so conducted as to enable the local authority to determine whether the nuisance exists, or whether it existed at the time the notice was given, and, although the same may have been since removed or discontinued, is likely to recur or to be repeated on the same premises or any part thereof (sec. 12). If admission be not given, reasonable notice in writing of an intended application to a justice having jurisdiction in the place for an order under his hand, requiring the person having the custody of the premises to admit the local authority or their officer, should be given (sec. 11). The notice must be served at least twenty-four hours before the time at which it is proposed to make the entry. This notice may be in the Form (C.) to the Act, and may be served, where the person to whom the same is addressed does not reside at a distance of more than five miles from the office of the inspector, by delivering the same to or at the residence of the person to whom it is addressed, and when addressed to the owner or occupier of premises it may also be served by delivering the same, or a true copy thereof, to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises. If addressed to a person by name, and not to the owner or occupier of the premises, and the person resides at a distance of more than five miles from the office of the inspector, the notice may be sent by a registered letter through the post (sec. 31). The distance in all cases under section 31 is to be measured in a straight line from point to point, as on a horizontal plane,—*Lake v. Butler*,

24 L. J., Q. B. 273; *Stokes v. Grissell*, 14 C. B. 678, 23 L. J., C. P., 113,—in familiar language, “as the crow flies.” On proof before such justice of the demand, refusal, and notice, and on oath made before him of belief in the existence of the nuisance, he may, by order under his hand, require the person having the custody of the premises to admit the local authority or their officer (sec. 11). If no person having custody of the premises can be discovered, any such justice shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand, authorize the local authority or their officers to enter the premises between the hours aforesaid (sec. 11). The schedule to the Act furnishes (Form A.) a form of an order of justices for admission to private premises, when some person having custody of the premises can be found. The form may be easily adapted to the case in which no person having custody of the premises can be discovered.

The order of admission to inspect having been obtained, the inspection must be conducted for the purpose already mentioned, that is, to enable the local authority to ascertain whether a nuisance exists, or did exist at the time when notice was given, and, whether, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof (sec. 12).

The reasonable costs and expenses incurred in giving notice, and obtaining the order of a justice, may be recovered under sec. 19, in the manner hereinafter mentioned.

The power of entry for other purposes will be more

advantageously considered in connection with the sections for removing nuisances, and preventing the recurrence or repetition of them.

It will be a safe course for the local authority formally and in writing to ascertain, after entry and inspection, the existence of the nuisance, or that it did exist at the time notice was given, and, although since removed or discontinued, is in their opinion likely to recur. This should be done by reference to and as a conclusion from the report of their officers, or their own inspection, and the previous proceedings.

## PART II.

### THE REMOVAL OF NUISANCES.

The powers and duty of the local authority to proceed under this Act to the removal of a nuisance arise, when, by the proceedings in Part I. of the Act mentioned, which must be taken (secs. 10, 12), the local authority has ascertained—

That the nuisance complained of actually exists, or,

That the nuisance did in their opinion exist at the time when the notice was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises, or any part thereof.

In either of these cases it is the duty of the local authority to cause a complaint thereof to be made before a justice of the peace, whose duty it is thereupon to issue a summons requiring the person by whose act, default, permission, or sufferance, the nuisance arises or continues, or, if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices in petty sessions assembled, at their usual place of meeting, or one stipendiary or police magistrate acting at any police court for the district. At the return of the summons, the justices or justice are to inquire into the complaint, and if it be proved to their satisfaction,

That the nuisance exists,

Or, did exist at the time when the notice was given

Or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated.

The justices shall make such an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as in a subsequent section is mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance (sec. 12).

In *R. v. Cotton*, 28 L. J., M. C. 22; 22 J. P. 768, s. c., a rule for a distress warrant was discharged. Upon the argument the attention of the court was directed to sections 8, 10, 11, 12, 30, and 35, and it was held that the proceedings before justices given by the 12th section is confined to cases where the cause and effect of such nuisances exist within the area of the local authority. In that case *Ind, Coope, and Company*, brewers, at Romford, poured their refuse into a river at that place, and the consequential result of that act was the pollution of the water of the river at Dagenham; the local authority for Dagenham proceeded before the justices for the abatement of the nuisance, and it was held, that as the cause of the nuisance arose out of the jurisdiction of the local authority, the justices had no power to hear and determine the question.

In *R.* (on the prosecution of the *Earl of Derby*) v. *Gee and others*, the contest was whether the nuisance in that case was one which the Earl could be required under section 12 to abate, or whether he was entitled to a mandamus to compel the Nuisances Removal Committee to abate it. It was ultimately held that, as it was a nuisance within the 22nd section, a mandamus ought to issue to the committee. The facts of the case are stated *ante*, p. 14, and *post*, p. 39.

The schedule has a form of complaint (D.), which, varied as circumstances require, will be sufficient. The form provides, first, for the case of a summons to the owner or occupier of the premises on which the nuisance arises, and next for that of a summons to the person by whose act, default, permission, or sufferance the nuisance arises or continues. It is, however, only if the person by whose act, default, permission or sufferance the nuisance arises or continues cannot be found or ascertained, that the summons ought to issue to the owner or occupier.

By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their pre-

vious order by another declaring such house habitable from the date of which other order such house may be let or inhabited (sec. 13).

As the order is to be made at the time the complaint is heard, and the local authority is empowered in case of default (sec. 14) to enter and do whatever may be necessary in execution of the order, and charge the cost to the person on whom the order is made, it will be material in all cases to be prepared at the hearing of the complaint to point out specifically the very things that are to be done, and the manner and time of doing them. In a recent case upon a local improvement Act, it was held that the notice of the works required to be done was not sufficiently specific. *Parkinson, appellant, v. The Mayor of Blackburn, respondent*, 23 J. P. 294. The advice above is offered to both parties; for defendants must bear in mind that there is no appeal against orders for the abatement of a nuisance, except so far as they may direct the execution of structural works (sec. 16). *Ex parte The Mayor of Liverpool*, 8 E. & B. 539; 27 L. J., M. C. 89, s. c. *post*, p. 30. The second power of entry conferred by sec. 11, seems to have been in part intended for this purpose. The power is given to the local authority to enter on the premises, by themselves or their officers, between the hours of 9 A. M. and 6 P. M., for the purpose of examining premises whenever under the provisions of this Act a nuisance has been ascertained to exist, or where an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be. With respect to the prohibitive powers, it



seems to result from collating the words of the section with the Form of Order (E.) in the schedule, that the power to prohibit recurrence is general and not confined, as the 12th section would suggest, to the case of a nuisance removed or discontinued since the notice, but likely to recur. No form is provided for declaring habitable a house which justices may have forbidden to be used for human habitation ; but such an order may easily be framed from Forms (E.) or (F.), by reciting an order in one of those forms, and adding the words following, or others to the same effect :—

“Now we, being satisfied that the said house or building has been rendered and is fit for human habitation, do hereby declare such house or building habitable. Given, &c.”

The order may be made by two justices in petty sessions assembled at their usual place of meeting, or one stipendiary or police magistrate acting at any police court for the district, and need not be made by the same two justices or magistrate who imposed the prohibition.

The order of prohibition, or prohibitive part of an order, may be appealed against (sec. 15) in manner prescribed by the 40th section, which will be commented on hereafter. At present it will suffice to remark that, as the prescribed conditions of appeal do not limit the grounds of appeal, the judgment of the justices may be impeached generally. There is nothing in the Act to suspend the legal force of the prohibition during the pendency of the appeal, and the prohibition, therefore, during such pendency must be respected. *Kendall v. Wilkinson*, 24 L. J., M. C., 89.

It may sometimes appear to the justices that the execution of structural works is required for the abatement of a nuisance. They are in such case empowered

to direct such works to be carried out under the direction, or with the consent or approval of any public board, trustees or commissioners having jurisdiction in the place in respect of such works. The whole legal force of such an order may, however, be suspended until after the determination of, or the ceasing to prosecute, an appeal against it, if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided by the Act, and shall appeal accordingly. The grounds of appeal must be confined to the part of the order which relates to the execution of structural works (sec. 16).

It is to be observed that the sixteenth section applies to structural works required in respect of private nuisances, to which alone the first twenty sections of the Act relate. See per Erle, J., *R. v. The Nuisances Removal Committee of Middleton*, 28 L. J., M. C. 45.

An order was made by two justices upon the mayor, aldermen and burgesses of Liverpool upon the complaint of an officer of a Nuisance Removal Committee on behalf of the committee. It recited that in and upon the premises nuisances existed, arising from sewage and filth flowing from a gaol and certain open ditches and watercourses, and from accumulations of sewage, and ordered the parties "to abate and discontinue the said nuisance, and to do such works and acts as are necessary to abate the said nuisance, so that the same shall no longer be a nuisance;" and if the order was not complied with the committee were authorized to enter upon the premises and do all such works, matters or things as might be necessary for carrying the order into execution. It was held that this was an order for abatement, and not an order for the execution of structural works so as to be subject

to appeal; and that a penalty might be imposed under sec. 14 for disobedience of the order; though it was deposed (upon an application for a certiorari and mandamus to compel the sessions to hear an appeal) that the only proper and convenient mode of abating the nuisance was by constructing an underground drain, 800 feet in length. *Ex parte The Mayor of Liverpool*, 8 E. & B. 539; 27 L. J., M. C. 89; and 22 J. P. 562, s. c.

Any person not obeying the order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than 10s. per day during his default. Any person knowingly and wilfully acting contrary to the order of prohibition shall be liable for every such offence to a penalty not exceeding 20s. per day during such contrary action (sec. 14). See *Ex parte The Mayor of Liverpool, sup.* These penalties can only be inflicted on the persons named or described in the order. They can be enforced notwithstanding an appeal against a prohibition; but cannot be enforced in respect of an order for the execution of structural works pending an appeal against it.

The local authority *may* enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person on whom the order is made, as in the Act is provided (sec. 14). It is to be observed that this section enacts that the local authority "may" enter, and it has been decided that they have a discretion. The sanitary inspector for the local authority (Local Board of Health) of Ham obtained an order upon an occupier of premises within the district to cleanse a drain proved to their satisfaction to be a

nuisance, but it was not enforced. One Bassett was interested in the removal, as the drain which ran past his premises was injurious to health; and after causing a copy of the order to be served by the clerk of the justices upon the party against whom it had been obtained, and serving notices upon the sanitary inspector and the chairman of the local authority, applied for a mandamus ordering the local board of Ham to take steps for enforcing the order. It was held not obligatory upon the local authority to do so, and the mandamus was refused. *Ex parte Bassett*, 7 E. & B. 280, 26 L. J., M. C. 64, s. c. But see the observations made upon this case, and *R.* (on the prosecution of the *Earl of Derby*) v. *Gee and others*, ante, p. 19; and as to the interpretation to be given to "may" in a statute, *Crake v. Powell*, 2 E. & B. 211; *Macdoughall v. Patteson*, 11 C. B. 759, and *Jones v. Harrison*, 6 Ex. 332.

The entry is to be made under the powers and conditions of entry conferred by the 11th section; and where the powers of the Act have been exceeded, the court of Chancery has granted an injunction.

The Board of Works of the Wandsworth district passed a resolution that no privies or cesspools should be allowed in that district, and in January, 1857, served a notice on the owner of cottages, requiring him within fourteen days to convert privies into water-closets, and threatening compulsory proceedings in case of neglect. In the following June they served a second notice, which, like the former, was entitled in the Metropolis Local Management Act (18 & 19 Vict. c. 120), and in the Nuisances Removal and Diseases Prevention Act (18 & 19 Vict. c. 121), stating that as the former notice had not been attended to, they should, within seven days, enter and enforce the provisions of those Acts against the owner. On the 7th of November

they entered and commenced the works, whereupon the owner filed a bill for an injunction, which Stuart, V. C., granted. (*Tinkler v. The Board of Works for the Wandsworth District*, 3 Jur. N.S. 1292.) Upon appeal to the Lords Justices they affirmed the Vice-Chancellor's decision, holding that the Board had exceeded its powers in coming to the resolution; that under the Nuisances Removal Act, they had no authority to enter unless a previous order of justices of the peace had been obtained; and that the jurisdiction of the court of Chancery to interfere by injunction was not ousted by the 211th section of the Metropolitan Local Management Act giving an appeal to the Metropolitan Board of Works. *Tinkler v. The Board of Works for the Wandsworth District*, 27 L. J., C. C. 342.

Two of the powers of entry under the 11th section, and the conditions under which and the purposes for which they are to be exercised, have already been described. The third power is for the local authority or their officer from time to time to enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice, in order to remove or abate a nuisance in case of noncompliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour, under the powers and for the purposes of this Act.

Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act (sec. 17).

The schedule contains a Form (F.) for the order.

Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in case where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing ; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act, with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing (sec 18).

The local authority should apply for an order in writing for an immediate removal, destruction, or sale, and support the application by evidence that delay would be prejudicial to health.

All reasonable costs and expenses from time to time incurred in making a complaint or giving notice, or in obtaining an order of justices under this Act, or in carrying it into effect, may in general be recovered by the party by whom they were incurred, in an action for money paid for the use and at the request of the person on whom the order is made. In two cases, however, this is not so. If the order has been made on the local authority ; or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given ; the action is to be against the person by whose act or default the nuisance was caused (sec 19). An order is to be made on the local authority under the 11th section, authorizing them or their officer to enter premises for the purpose of inspecting them, when there is no person having the custody of the premises ; and under the 17th section when the person, by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known, or cannot be found.

"In case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local authority think fit, before any two justices of the peace, and the justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable" (sec. 19). The action will lie in the county court, though the title to land should come in question. *Guardians of the Poor of Hertford Union v. Kimpton and another*, 25 L. J., M. C. 41; *R. v. Harden*, 2 E. & B. 128. The recovery before justices of the peace seems, however, to be the better remedy, as they will have the right to apportion the costs, expenses, and penalties in the manner which to them shall seem reasonable; and the local authority ought, in all cases in which the nuisance arises from the act or default of more than one person, to recover the costs, expenses, and penalties before justices.

If it appear to the justices that a complaint made under the Act is frivolous or unfounded, they may order payment of the costs, or any part thereof, by the local authority or the person making the complaint (sec. 19).

The mode of recovering before justices any costs, expenses, or penalties due to the local authority, under or in consequence of any order of justices, made in pursuance of the Act "as aforesaid,"—that is, in pursuance of anything in the first 19 sections contained,—

is by summons issued by one justice, upon the application of the local authority, requiring the person from whom the costs, expenses, or penalties are so due, to appear before two justices at a time and place to be named in the summons, and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices shall think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale (sec. 20).

The mode of recovery just described is not available for any other complainant, or for a party complained against, who becomes entitled to costs. By (sec. 38) the mode of recovery before justices provided for them is under the provisions of the 11 & 12 Vict. c. 43.

A similar enactment is contained in the Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122, s. 103. By section 11 of 11 & 12 Vict. c. 43, complaints, where no time is otherwise limited by the Act, are to be laid within six months from the time when the matter of complaint arose. In a recent case the owner of a dangerous structure was required by the commissioners acting in pursuance of the Metropolitan Building Act to take it down, and having neglected to do so the commissioners took it down, and a demand of the expenses was made of the owner, who refused to pay them. A complaint was laid within six months of the



demand and refusal ; but beyond six months from the completion of the works. It was held that the matter of complaint was the non-payment of the expenses ; that the time of limitation ran from the demand and not from the completion of the works ; and, therefore, that the complaint was in time. *Labalmondière, appellant, v. Addison, respondent*, 28 L. J., M. C. 25.

The 19th section, it will have been observed, contains a provision that " in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises. The expression " the said premises shall be and continue chargeable" is somewhat obscure. It can scarcely have been intended that these costs, expenses, and penalties should be a charge which might be enforced in equity. Looking at the 2nd section, it appears that the word " owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of Chancery, or under any order thereof, or who would receive the same if such property were let to a tenant. Again, under sec. 20, the summons for enforcing payment of costs is to go " to the person from whom they are due," and payment by instalments may be received. In cases, however, of nuisances caused by the act or default of the owner of premises, the original complaint and order will have been, at all events are intended to be, against " the owner of the premises" by that description, and not by

his name (sec. 35). It is conjectured, therefore, that by the expression "the said premises shall be and continue chargeable," &c., the legislature intended to make the costs, expenses, and penalties to an amount not exceeding in the whole one year's rack-rent of the premises, recoverable from any owner for the time being of the premises, until that amount should be fully discharged.

All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways (sec. 21).

The "district surveyors" are those described in ss. 13 & 16 of the 5 & 6 W. 4, c. 50. The amount to be paid for damages done is to be settled and ascertained by order of justices at a special sessions for the highways, 5 & 6 W. 4, c. 50, s. 54. The holding of special sessions of the highways is regulated by the 49th section of 5 & 6 W. 4, c. 50. The power extends to any lands or grounds "adjoining or lying near to any highway;" the right to damages arises only in case the lands or grounds are not waste or common. The words "upon paying," &c., do not make payment a condition precedent. *Peters v. Clarson*, 7 M. & G. 548. The duty to pay does not arise until after the justices have ascertained the amount of satisfaction.

Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous, without the laying down

of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King *William the Fourth*, intituled "An Act for consolidating and amending the Laws relating to Highways in *England*;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in *England*: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any (sec. 22).

To justify the exercise of the powers conferred by the 22nd section, the existence of a nuisance within the meaning of this Act must be ascertained by the means pointed out in the first part. The local authority must then, on evidence duly laid before them, formally resolve that the ditch, &c. cannot, in their opinion, be

rendered innocuous without the laying down of a sewer, or of some other structure along the same or part thereof, or instead thereof. Then, by the 5 & 6 W. 4, c. 50, s. 67, they may, within their own jurisdiction, make, scour, cleanse and keep open all ditches, gutters, drains, or watercourses, and also make or lay such trunks, tunnels, plots, or bridges, as they shall deem necessary, in and through any grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials are by sec. 54 of the same Act directed to be paid. The words "upon paying," &c., do not make payment a condition precedent. The effect of the 68th section of the 5 & 6 W. 4, c. 50, on the 22nd section of the 18 & 19 Vict. c. 121, will be to make any owner, occupier, or other person who shall alter, obstruct, or in any manner interfere with any sewer or other structure laid down under the last-named section, or any of the works necessary or used in laying it down, after they shall be made by or taken under charge of the local authority, without their authority or consent, liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and also to forfeit any sum not exceeding three times the amount of such charges and expenses.

The duties of local authorities under this section can be enforced by *mandamus*. In *R.* (on the prosecution of the *Earl of Derby*) *v. Gee and others*, 83 L. T. 183, 23 J. P. 374, s. c., where the defendants, a Nuisances Removal Committee, were of opinion that a nuisance, existing at an extra-parochial place on the sea shore,

and arising from a sewer conveying sewage from houses, which, as well as all the surrounding land, were the property of the Earl, could not be rendered innocuous without laying down a sewer, or some other structure, and resisted a rule for a mandamus obtained by the Earl, calling upon them to make such sewer or structure, the Queen's Bench made the rule absolute.

It appears from the note of this case, 23 J. P. 84, that before the rule was obtained, an order had been obtained against the prosecutor, under the 12th and early sections of the Act, requiring him to abate the nuisance in question; but that, except in paying the costs of the order, he had disobeyed it; and the ground of the decision may be inferred from the *obiter dicta* there of Crompton J.: "I think that the 22nd section must be held to include at the least a case in which a private person has a watercourse, into which the sewage from new buildings is made to flow to such an extent as to cause a nuisance requiring a remedy by structural works along the watercourse, or part of it or instead of it. To make the owner of the watercourse do such works would be a hardship. The intention is, therefore, that the community should do it, at the expense of those who get the benefit."

It follows from the ultimate decision of the Queen's Bench in this case (33 L. T. 183, 23 J. P. 374, s. c.) that many nuisances arising from open sewers discharging themselves upon the sea shore throughout the kingdom, for which hitherto there has been no remedy, may now be abated. See the remarks upon this case, and *Ex parte Bassett*, ante, pp. 15, 19.

With regard to the assessment, it is to be observed that user, "for the purposes aforesaid," that is, for the conveyance of any water, filth, sewage, or other matter from any house, building, or premises, is the condition

of liability, and that liability is the consequence of user. The payment may be immediate or annual, or distributed over a term of years, as the local authority shall consider just and reasonable. A collection by levy cannot take place until after fourteen days' notice at the least, left on the premises, that is, there must be not less than fourteen clear days between the notice and the levy. The section concludes by providing that the assessment is in no case to exceed a shilling in the pound on the assessment to the highway rate, if any.

The Queen's Bench were required to put a construction on this proviso in the recent case of *Reg. v. The Nuisances Removal Committee of Middleton*, 28 L. J., M. C. 41; and held that it limited the annual assessment only to one shilling in the pound on the rateable value as assessed to the highway rate, but did not prohibit the whole assessment of the premises in respect of one structure, to be distributed over several years, from exceeding that amount.

In *R. v. Warner*, 6 E. & B. 395, the local authority for Hornsey (the board for repair of highways under 5 & 6 W. 4, c. 50, s. 18) for the purpose of rendering innocuous a ditch by which the filth was conveyed from certain houses, and which constituted a nuisance, constructed a sewer, and under sec. 22 assessed the houses *then* using the ditch or sewer, at an annual sum amounting to sixpence in the pound on the assessment to the highway rate. By a separate resolution passed afterwards on the same day it was resolved, that the annual payment might be compounded for within two months after service of notice of assessment, by payment of the amount of four years annual payments; after one year from the date of the assessment, by payment of the amount of three and a

half years annual payments; after two years, by payment of the amount of three years annual payments; after three or more years, by payment of the amount of two years annual payments; all arrears in every case having been first paid up: in default of such composition, the payment to be perpetual. Notice of the assessment, containing also, on the same paper, a notice of the subsequent resolution, was served upon the owners and occupiers. Payment being refused by an occupier, justices were applied to for a warrant of distress. They refused to grant it, stating in writing that they had so much difficulty in coming to a decision on the construction of the 22nd section that they had determined to refuse such warrants, but did not overlook 11 & 12 Vict. c. 44, s. 5, by which the parties might obtain the decision of a superior court. Upon motion for an order to the justices to issue the warrant the Queen's Bench made the order; and held that, supposing the resolution respecting the composition was illegal (and *seem* that it was not), it was a matter distinct from the rate, which therefore was not invalidated by it; that the rate was not bad for being confined to houses then using the ditch or sewer; and that it was not bad because it was not published or allowed as required in the case of a highway rate by 5 & 6 W. 4, c. 50, s. 27. "I think we should make this rule absolute, and so protect the justices in issuing their warrants; at the same time, I confess that I do not quite perceive the meaning of the Act," per Crompton, J., 6 E. & B. 404.

It seems therefore from the case last cited, that the local authority may compound with parties assessed under the 22nd section; that it is proper to limit the assessment to houses in existence at the time; and that publication and allowance as required by the

General Highway Act (*Sibbald v. Roderick*, 11 A. & E. 38) are unnecessary.

The local authority has no power to assess property situated beyond the area of their local jurisdiction. The drainage of two houses in the parish of St. Pancras was carried by a covered drain into an open ditch in the parish of Hornsey; this ditch being a nuisance was made into a covered sewer by the local authority, who, under sec. 22, assessed the two houses as using the drain or structure so made; but upon cause being shown against a rule for a distress warrant, the rule was discharged upon the ground that the power of the local board was confined to so much of the premises as was included within the limits of their parish, *R. v. Warner*; 27 L. J., M. C. 144. "Parochiality seems to be contemplated throughout, as in the last proviso, that such assessment shall in no case exceed one shilling in the pound on the assessment to the highway rate. If the assessment by each authority is not confined to their own jurisdiction, difficulties would arise. Suppose a drain through two parishes, in which the highway rate is different, which highway rate is to be the guide? Whatever inconvenience, if any, may arise in a case like the present, must be remedied by the legislature." Per Lord Campbell, C. J., *ib.* 146, 22 J. P. 594, s. c.

In the last cited case it was questioned whether the two houses *used* the structure within the meaning of the 22nd section, as they derived no benefit from the covering of the ditch, which was no nuisance to them.

With regard to the area of the jurisdiction of the local authority, it has been decided that proceedings before justices under the 12th section for removing nuisances are confined to cases where the cause and



effect of such nuisances exist within it. *R. v. Cotton*, 28 L. J., M. C. 22.

A collector and treasurer may be appointed and paid, (5 & 6 W. 4, c. 50, s. 18).

The provisions of the 13 & 14 Vict. c. 99, "An Act for the better assessing and collecting the Poor Rates and Highway Rates in respect of Small Tenements," apply.

In case of default the local authority is to have the same power, remedies, and privileges as overseers of the poor in a parish had, by law, for the recovery of any rate made for the relief of the poor, (see 12 Vict. c. 14.)

The right of appeal is against the amount only. The appeal must be by the person or persons assessed. The manner of the appeal is prescribed by 5 & 6 W. 4, c. 50, s. 105. By sec. 105 of that Act right is given to any person aggrieved by any rate to appeal to the quarter sessions, first giving to the opposite party notice within fourteen days after such rate shall have been made; and it has been held that the fourteen days for giving notice of appeal against an assessment under sec. 22 of the Nuisances Removal Act, 1855, runs from the service of the notice of assessment on the premises assessed; and not from the time when the amount was fixed by the local authority. *R. v. The Nuisances Removal Committee of Middleton*, 28 L. J., M. C. 41.

As the provisions of the 22nd section are to be deemed part of the law relating to highways in England, it follows that the law relating to highways must be administered in conformity with, and in respect of former statutes inconsistent with this, in subordination to this Act.

Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any

stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds (sec. 23).

Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased (sec. 24).

In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act (sec. 25).

These clauses against the corruption of water by gas washings are very stringent. The offence in the first part of the 23rd section may be committed passively, by causing or suffering to be brought or to flow. To constitute the offence against which the latter part of the section is directed, there must be a "wilful" act. The words "full costs of suit," mean costs taxed

as between party and party. As the penalty is not recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased, and the local authority cannot proceed in the case of a private injury, except in default of proceedings by the party injured and after notice to such party of their intention to proceed, nor get themselves substituted for a private plaintiff who refuses to go on, it would seem that the person injured has the control.

The 25th section holds out a reward to the local authority and the private person injured for being first to give notice of the offence to the person or company offending, and so the motives for enforcing discontinuance are increased. The penalty under the 25th section is to be recovered "in the like manner" as that under the 24th; that is, in the superior courts, and with full costs of suit. The limitation of six months, however, does not seem to apply. Indeed the continuance of the offence, after notice, is a new and aggravated offence, which may fairly be held to disentitle the offender from receiving the benefit of the limitation accorded to an offender who at once discontinues the cause of offence. The notice under section 25 may be served according to section 31 of this Act, on which some observations have already been made (*a*). In the case of a letter sent by post, the twenty-four hours will begin to run from the time when by the ordinary course of the post-office the letter would be received by the person to whom the notice is addressed. *R. v. Inhabitants of Slawston*, 16 Jur. 1066.

The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or in the course of

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(*a*) *Vide supra*, p. 21.

or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in England ; and in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour appear to him to be unfit for such food, the same may be seized ; and if it appear to a justice that any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food ; and the person to whom such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables corn, bread, or flour so found (sec. 26).

To justify the sanitary inspector, or the justice, under this section, the carcase, &c. must either be exposed for sale, or *be intended to be used for food*. See *Elias v. Nightingale*, 27 L. J., M. C. 151.

Two sections, the 27th and 28th, have been framed for the purpose of giving a power of initiating proceedings, under this Act, to any medical officer, or any two legally qualified medical practitioners, for the suppression or mitigation, within the limits of any city, town, or populous district, of processes causing noxious effluvia in buildings or places used for any trade, business, or manufacture. The case of accumulation or deposit for purposes of business, has been provided for in earlier sections. The certificate of one such officer, or two such practitioners, as to the fact of the nuisance, or the injuriousness to the health of the inhabitants of the neighbourhood, is the foundation of the jurisdiction of the local authority to complain, and of the one justice to summon, and two, or a stipendiary or police magistrate in any police court within the district, to adjudicate. Then the place must be shown to be not without the limits of any city, town, or populous dis-

trict. The substance of the complaint will be that the trade or business carried on by the person complained against is a nuisance or causes some effluvia injurious to the health of the inhabitants of the neighbourhood. The defendant may be the owner or occupier of the premises wherein the trade or business is carried on, or a foreman or other person employed by such owner or occupier. The nuisance, or the causing injurious effluvia, must be proved, and some evidence must be adduced, though slight evidence will be sufficient, (14 C. B. 678, *Stokes v. Grissel*, 23 L. J., C. P. 116,) by the complainant, that the defendant has not used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia (sec. 27). The party complained against may oust the justices of jurisdiction to proceed, if upon his appearance before them, in obedience to the summons, he object to have the matter determined by them, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of the complaint. Thereupon the local authority shall abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity, in her Majesty's superior court, for preventing or abating the nuisance complained of (sec. 28). If the jurisdiction be not so ousted, and the justices are satisfied that the complaint has been proved, and that the best practicable means (a) for abating such nuisance, or preventing or counteracting such effluvia, have not been used, they may convict the defendant summarily, and he shall forfeit and pay a sum of not more than 5*l.*, nor less than 40*s.*; and upon a second

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(a) *Vide supra*, p. 8, as to the meaning of "best means."

conviction for such offence, the sum of 10*l.*, and for each subsequent conviction, a sum double the amount of the penalty imposed for the last preceding conviction; but the highest amount of such penalty shall not in any case exceed the sum of 200*l.* The justices, may, however, "suspend their final determination" on any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as they shall judge to be practicable and order to be carried into effect for abating such nuisance or mitigating or preventing the injurious effects of such effluvia, or if that person shall give notice of appeal in the manner provided by this Act (sec. 40), and shall enter into recognizances to try such appeal, and shall appeal accordingly. The expression "suspend their final determination," &c., seems to mean, suspend the taking any proceedings upon the conviction, until the determination of the appeal (sec. 27).

Upon an indictment for nuisance at common law in carrying on a trade, a summary conviction under 16 & 17 Vict. c. 128, s. 1, for carrying on the same trade so as to occasion effluvia without using the best practicable means is not admissible in evidence. *R. v. Fairie*, 4 Jur. (n. s.) 300.

Any medical officer of health, (the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 40; Towns Improvement Clauses Act, 1848, 10 & 11 Vict. c. 34, s. 12,) if there be one, or if none, two qualified medical practitioners, by their certificate to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, may, if the inhabitants shall consist of more than one family, make it the duty of the local authority to cause proceedings to be taken before the justices to abate such overcrowding, and the justices

shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40s. (sec. 29). The certificate is the foundation of the jurisdiction. The offence to be proved will be an overcrowding dangerous or prejudicial to the health of the inhabitants of the house. Evidence must be given that the inhabitants consist of more than one family. The justices have absolute authority to order what they please; obedience to the order is to be enforced, it would seem, by indictment.

The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act (sect. 30).

Unless both the cause and effect of a nuisance exist within the area of the jurisdiction of the local authority, justices have no jurisdiction to entertain proceedings under sec. 12, to remove or prevent it. *R. v. Cotton*, 28 L. J., M. C. 22. Neither has the local authority power under sec. 22 to assess property situate out of their jurisdiction. *R. v. Warner*, 27 L. J., M. C. 144.

The audit of the accounts of the local authority will be conducted by the persons having power to audit the accounts of that body in another capacity. *R. v. Governors, &c., of the Poor of Bristol*, 13 Q. B. 405 and 414.

In the first class of extra-parochial places mentioned in the first part, the accounts of the local authority cannot, it would appear, be checked except in a court of equity.

## PART III.

### PROCEDURE.

The service of notices, summonses, and orders under this Act is provided for by sec. 31, on which sufficient observations have already been made (a).

To facilitate proof of resolutions the 32nd section enacts, that "copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same." The meaning is, that papers purporting to be copies, &c., and to be signed by the chairman, shall be evidence, without proof, &c.

When one nuisance has been caused by the joint act or default of several persons, and proceedings are to be taken under this Act, in respect of it, by the local authority, all such persons may be included in one complaint, and in one summons, and the justices may make an order therein upon all or any of the persons included in the summons, and distribute the costs as to them may appear fair and reasonable (sec. 33). Proceedings under this Act against several persons shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally included (sec. 39). If, however, two or more

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(a) *Vide supra*, pp. 21, 46.



persons are answerable, being owners or occupiers of premises, or partly the one or partly the other, in respect of their being such owners or occupiers, jointly, or in common, or severally, to any demand or complaint under this Act, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them (sec. 34). But nothing in the Act contained shall prevent the parties so—that is, without the other or others of them—proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law (*Id.*)

It will be sufficient in any proceeding under this Act, whether written or otherwise, in which it shall become necessary to mention or refer to the owner or occupier of any premises, to designate him as the “owner” or “occupier” of such premises, without name or further description (sec. 35). The designation without name or further description is to be preferred when applicable, the provisions of the previous section (sec. 34) making it quite safe.

Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds (sec. 36).

On reference to the 11th section it will be perceived that when there is a person having possession of the premises, the justices have not jurisdiction to authorize the local authority or its officers to enter the premises.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary

for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance (sec. 37).

The schedule contains a form (G.) of an order on the occupier to permit the execution of works required to be executed, and from it the form of summons may be easily framed.

Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act (sec. 38).

The schedule contains forms (H. I. K.) of a summons, or for payment, and distress warrant, but they apply to sec. 20 only. Under the 38th section the provisions of the 11 & 12 Vict. c. 43, are to be adopted.

No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by certiorari, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included (sec. 39).

It will be seen by the next section that a certiorari is allowed where the quarter sessions state a case.

In a case already referred to an appeal against an

order of justices was entered and respited to the next sessions; but, when called on, the sessions held that they had no jurisdiction to hear it; and the justices, in petty sessions, subsequently made a second order upon the corporation to pay £20 and £50 penalties for disobedience under sec. 14. The Queen's Bench having held that the first order was not the subject of appeal, held that neither of the orders could be brought up by *certiorari* under sec. 39. *Ex parte the Mayor of Liverpool*, 8 E. & B. 539; 27 L. J., M. C. 89, s. c.

The language of the 39th section, "done or transacted in relation to the execution of this Act," is peculiar, but it is apprehended that it gives no protection to acts done without jurisdiction. In *Foster v. Hornsby*, 2 Ir. Eq. Rep. N. S. 420, an Act of Parliament, under which certain commissioners derived authority, provided that it should not be lawful for any person whatever in any manner to question or appeal against or in respect of anything whatsoever done or omitted to be done by the said commissioners under the provisions of certain recited Acts and that Act, nor should any proceeding to be had or taken by or on behalf of the commissioners for the purposes of the said Acts, be removed or removable by *certiorari* into any of Her Majesty's courts of record. *Held*, (following the decision in *Sharpley v. Hornsby*, 4 Ir. Jur. 38), that the provision applied only to questions of procedure, and afforded no protection where the commissioners exceeded their jurisdiction.

Appeals are to be made to the court of quarter sessions held next after the making of the order appealed against, unless there be not time to give the notice and enter into the recognizance hereinafter mentioned, in which case the appeal may be made to the next sessions

at which it can be heard. To entitle the appellant to be heard in support of the appeal, he must, within fourteen days after the making of the order appealed against, give notice in writing to the local authority, stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal; and at the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement. Within two days after giving the notice the appellant must enter into a recognizance before some justice of the peace, with sufficient sureties, conditioned to try the appeal at the said court,—that is, the next court of quarter sessions at which the appeal can be heard,—and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as it shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons, to all intents and purposes whatsoever. The court of quarter sessions may, however, if it think fit, state the facts specially for the determination of the court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of Queen's Bench (sec. 40). This does not interfere with the power of stating a case by consent, after notice of appeal, under the 12 & 13 Vict. c. 45.

In *Ex parte the Mayor of Liverpool*, 8 E. & B. 539, 27 L. J. M. C. 89, it was insisted for the corporation that the order made in that case was for the execution of structural works, so as to be subject of appeal under sec. 16; but it was held that the order was

merely to abate a nuisance, and that there was no appeal.

The forms in the schedule, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended (sec. 41).

The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being (sec. 42). As the law now is, therefore, no writ or process shall be sued out against, or served upon, the local authority, or any officer or person under the authority and in execution, or intended execution, of this Act (see *Read v. Coker*, 13 C. B. 870), until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved, the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act, and all special matter, in evidence thereunder; and any person to whom any such notice of

action is given as aforesaid, may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted, may plead such tender in bar, and (by leave of the court) either the general issue or other plea or pleas; and if upon any issue joined upon any plea pleaded to the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinued, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the court, at any time before trial, pay into court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue, or other plea or pleas, any rule of court or practice to the contrary notwithstanding (11 & 12 Vict. c. 63, s. 139). No matter or thing done or contract entered into by the local authority, and any officer or person acting under the authority and in execution, or intended execution, of this Act, shall, if the matter or thing were done or the contract entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by the local authority, and any officer or person acting under the authority, and in execution or intended execution, of this Act, shall be borne and repaid out of the rates levied under the authority of this Act (11 & 12 Vict. c. 63, s. 140).

Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of

drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from Steam Vessels above London Bridge," or the Common Lodging Houses Acts, the Act for the Regulation of Municipal Corporations, the Public Health Act, or any Improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any byelaws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act (sec. 43).

Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals (sec. 44).

It has been contended before magistrates that this section exempts from the operation of this Act all nuisances occasioned by manufactories in which the produce of ores and minerals may be subjected to the action of labour, directly or indirectly manual. The cases went off without authoritative decision; but it is apprehended that the legislature intended only to exempt processes for gaining directly the produce of ores and minerals, whether by fire or otherwise, and not processes for applying such produce when gained.

No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person (sec. 45).

In citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for England, 1855" (sec. 46).

The last form in the schedule (Form L.) is one of a return by the local authority of proceedings under the Act. The return is to be signed by the chairman of the local authority. The duty of making the return, or of preserving the materials for making it, is not expressly imposed, neither is it stated to what authority the return is to be made.





# TABLE,

Showing,—1st, the repealed sections of the 18 & 19 Vict. c. 121;—2nd, the sections of the 23 & 24 Vict. c. 77, by which other provisions are substituted for those contained in the repealed sections of the 18 & 19 Vict. c. 121;—3rd, the effect of the repeal and substitution.

Clause of 18 & 19 Vict. c. 121, repealed.	Substituted clause of 23 & 24 Vict. c. 77.	Effect of repeal and substitution.
3	2	<p>The repealed section is to be read as if all the words of it after the words "nor council, body of trustees or commissioners" (<i>post</i>, p. 63, line 19 from top,) were struck out, and the following substituted :—</p> <p>In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor for such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.</p>
	and	<p>The 3rd section of the Act of the 23 &amp; 24 Vict. permits highway boards and existing nuisances removal committees to continue to act in execution of the Nuisances Removal Acts, subject to the following conditions :—</p>
	3	<ol style="list-style-type: none"> <li>1. That such highway board or nuisances removal committee, on the 6th August, 1860, actually employed or joined with other local authorities in employing a sanitary inspector or inspectors.</li> <li>2. That such highway board, or nuisances removal committee, do not fail for two months in any year to appoint or employ a sanitary inspector or inspectors.</li> <li>3. In the case of a nuisances removal committee, that it was on the 6th of August, 1860, well chosen according to the 18 &amp; 19 Vict. c. 121, and be annually well chosen pursuant to that Act.</li> </ol>

Clause of 18 & 19 Vict. c. 121, repealed.	Substituted clause of 23 & 24 Vict. c. 77.	Effect of repeal and substitution.
6	none.	No questions by reason of any extra-parochiality.
7	4	<p>The repealed section may be read as if there were struck out of it all that relates to rates levied under an improvement Act for a borough administered by the council, or to the city of London, and also all after the words "powers of such an Act" (<i>post</i>, p. 65, line 11 from top); and there were then added the words following:—</p> <p>Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor.:</p> <p>Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority:</p> <p>Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "the nuisances removal committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof:</p> <p>Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any</p>

Clause of 18 & 19 Vict. c. 181, repealed.	Substituted clause of 23 & 24 Vict. c. 77.	Effect of repeal and substitution.
		<p>other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof; so much of any such charges and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.</p>
	and	
	5	<p>If the board of guardians of a union, being the local authority for all the places within the union, appoints a committee to act for less than all, or if such board is the local authority for two or more places in the union, but not for all, the expenses are to be defrayed out of the poor rates of the several places.</p>
9	9	<p>The local authority may, at their discretion, appoint or employ for the purpose of the Act inspectors of nuisances, but they are not bound to do so, and the power of joining with other local authorities in appointing or employing no longer exists.</p>



18 & 19 VICT. CAP. 121.

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## AN ACT

TO CONSOLIDATE AND AMEND THE NUISANCES  
REMOVAL AND DISEASES PREVENTION ACTS,  
1848 AND 1849.

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14TH AUGUST, 1855.

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WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and it is expedient to repeal the said Acts as far as relates to *England*, and to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to *England*: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts, shall continue and be as effectual as if the said Acts had not been repealed.

II. In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,) the word "place" includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word "guardians"

11 & 12 Vict.  
c. 123.  
12 & 13 Vict.  
c. 111.

Repealed Acts  
repealed as  
far as relates  
to England,  
except as to  
proceedings  
commenced.  
  
Interpreta-  
tion of cer-  
tain terms  
used in this  
Act.

includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cognizance of any such officer arises; the word, "borough," and the expressions, "mayor, aldermen, and burgesses," "council," and "borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough royal town, or other town having a warden, high bailiff, borough reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of, or at the disposal of such chief officers and governing bodies; the expression "improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes; the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of Chancery or under any order thereof, or who would receive the same if such property were let to a tenant; the word "premises" extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private: the word "parish" includes every township or place separately maintaining its poor, or separately maintaining its own highways; the expression "quarter sessions" means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word "person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole; and the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

## PART I.

*Constitution  
of Local  
Authority,  
Expenses,  
Description  
of Nuisances,  
and Powers  
of Entry.*

The local  
authority

## PART I.

And with respect to the constitution of the local authority for the execution of this Act, the expenses of its execution, the description of nuisances that may be dealt with under it, and the powers of entry for the purposes of the Act, be it enacted thus:

III. The following bodies shall respectively be the local

authority to execute this Act in the districts hereunder stated in *England* :

to execute  
this Act in  
places as  
herein  
stated.

In any place within which the Public Health Act is or shall be in force, the local board of health :

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of *London* and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being : and except in the city of *Oxford* and borough of *Cambridge*, where the local authority shall be the commissioners acting in execution of the local improvement Acts in force respectively in the said city and borough :

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners :

In any place within which there is no such local board of health, nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, that board :

In any place where there is no such local board of health, council, body of trustees, or commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose ; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum :

In any place wherein there is no such local board of health, council, body of trustees or commissioners, highway board or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting and watching under the Act 3 & 4 W. 4, c. 90, that board with the surveyor of highways :

In any place in which there is no such local board of health, council, body of trustees, or commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place.

IV. On any vacancy in such nuisances removal committee as to filling arising from death, change of residence or otherwise, notice of vacancies.



shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election; and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete.

Power to  
local authority to  
appoint  
committees.

V. The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects, execute this Act, whereof two shall be a quorum; and such local authority or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf.

As to the  
execution of  
this Act in  
extra-parochial  
places.

VI. In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a nuisances removal committee, elected annually by the householders within the extra-parochial place:

The first election of such committee shall take place at a meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place; and

Subsequent elections shall be held annually on some day in Easter week, at meetings summoned by the chairman of the local authority for the year preceding:

Extra-parochial places not so comprised as aforesaid, and having a population of less than two hundred persons, shall for the purpose of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections.

As to defray-  
ing expenses  
of executing  
this Act.

VII. All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

Out of general district rates, where the local authority is a local board of health:

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen and burgesses by the council, or if there be an improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such im-

provement Act; or in the city of *London* and the liberties thereof, any rates or funds administered by the commissioners of sewers for the said city and liberties :

Provided always, that in the city of *Oxford* and borough of *Cambridge* such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable :

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act :

Out of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisances removal committee :

Out of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching :

And if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred, but if such parish or place be now or hereafter shall be partly comprised within, and partly without the limits of a place where a local authority, other than a highway board, nuisances removal committee, inspectors of watching and lighting, and surveyors, or guardians and surveyors, exists or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits, shall be defrayed out of any highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded ; and if there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses ; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. c. 65, be raised and assessed upon such excluded part :

And when the local authority has not control of such rates or funds, the officer or person having the custody or control thereof, shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person ; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of

the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall include the costs of such distress and sale :

In extra-parochial places having a population of not less than two hundred persons, out of the rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein :

In extra-parochial places having a population of less than two hundred persons, out of a similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place :

And the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed, in the same manner and with the same remedies in case of any default of payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways.

What are deemed nuisances under this Act.

VIII. The word "nuisances" under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby.

Power to local authority to appoint a sanitary inspector, and allow him a proper salary.

IX. The local authority shall, for the purposes of this Act, appoint or employ, or join with other local authorities in appointing or employing, a sanitary inspector or inspectors, and may appoint a convenient place for his or their office, and may allow to every such person on account of his employment a proper salary or allowance; and where local authorities join in such appointment or employment, they may apportion among themselves the payment of such salary or allowance

Provided always, that where the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it shall not be necessary to appoint any other inspector under this Act, but the inspector acting in execution of the improvement Act, shall have all the powers, authorities, and privileges granted to any inspector appointed under this Act.

X. Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons; the sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses: and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed.

Notice of nuisances to be given to local authority, &c. to ground proceedings.

XI. The local authority shall have power of entry for the following purposes of this Act, and under the following conditions:—

Power of entry to local authority or their officer.

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand, require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him, of belief in the existence of such nuisance, and of the fact of no person having custody of the premises can be discovered, by order under his hand, authorize the local authority, or their officers, to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made,

or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done, shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers, and for the purposes of this Act.

For this purpose, the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice.

#### PART II.

*With regard  
to Removal  
of  
Nuisances.*

#### PART II.

With regard to the removal of nuisances, be it enacted thus:—

Proceedings  
by local  
authority  
before jus-  
tices in the  
case of  
nuisances  
likely to  
recur, &c.

XII. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance, in their opinion, did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion, likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists or did exist at the time when the notice was given, or if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

If proved to  
justices that  
nuisance  
exists, &c.,  
they shall  
issue order  
for abate-  
ment, &c.

XIII. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

Justices' order for abatement.

Prohibitive order against future nuisance.

XIV. Any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than ten shillings per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such contrary action; and the local authority may under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person to whom the order is made as hereinafter provided.

Penalty for contravention of order of abatement; and of prohibition.

Local authority may enter and remove or abate nuisance.

XV. Any such order of prohibition may be appealed against as provided in this Act.

Appeal against order of prohibition

Appeal  
against  
order of  
abatement  
when struc-  
tural works  
are required.

XVI. When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted.

If person  
causing nu-  
isance cannot  
be found,  
local author-  
ity to exe-  
cute order  
at once.

XVII. Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act.

Manure, &c.  
to be sold.

XVIII. Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing and the money arising from the sale retained by the local authority and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing.

Costs and  
expenses of  
works to be  
paid by  
person on  
whom order  
is made,  
or owner or  
occupier.

XIX. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in

any county or superior court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof.

XX. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale.

Proceedings before justices to recover expenses.

XXI. All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways.

Surveyors of highways to cleanse ditches, &c. paying owners, &c. for damages.

XXII. Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure and to keep the same in good and serviceable repair, and they are hereby declared to

Power to local authority to cover and improve open ditches, &c.



have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Highways in *England*;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in *England*: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any.

Penalty for causing water to be corrupted by gas washings.

XXIII. Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior courts within six months.

XXIV. Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it

be sued for during the continuance of the offence, or within six months after it shall have ceased.

XXV. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

XXVI. The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or in the course of or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in *England*; and in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be unfit for such food, the same may be seized; and if it appear to a justice that any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food; and the person to whom such carcase, meat, game, poultry, flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found.

XXVII. If any candle house, melting house, melting place, or soap house, or any slaughter house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building or place used for any trade, business, process or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint

to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting, the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against, is a nuisance, or causes an effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than five pounds, nor less than forty shillings, and upon a second conviction for such offence, the sum of ten pounds, and for each subsequent conviction, a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds: Provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and ordered to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly: Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

Reference to superior court at the option of the party complained against.

XXVIII. Provided also, that if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of.

On certificate of medical officer to local authority that house is overcrowded, proceed-

XXIX. Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the

justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding forty shillings.

XXX The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act.

Local authority to order costs of prosecutions to be paid out of the rates.

### PART III.

### PART III.

And with regard to procedure under this Act, be it enacted, that—

*As to Procedure under this Act.*

XXXI. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises, they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of the inspector, then by a registered letter through the post.

Service of notices, summonses, and orders.

XXXII. Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same.

Proof of resolutions of local authority.

XXXIII. Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable.

As to proceedings taken against several persons for the same offence.

XXXIV. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient

One or more joint owners or occupiers may be proceeded

against  
alone.

to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

Designation  
of "owner"  
or "occu-  
pier."

XXXV. Whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Penalty for  
obstructing  
execution of  
this Act.

XXXVI. Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds.

Penalty on  
occupier  
obstructing  
owner.

XXXVII. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf, shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act: and if within twenty-four hours after the service of such order, the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance.

Penalties and  
expenses re-  
coverable  
under 11 &  
12 Vict. c. 43.

XXXVIII. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in *England*, according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act.

Proceedings  
not to be  
quashed for  
want of  
form.

XXXIX. No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removeable by certiorari, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any

among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

**XL.** Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard; Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; Provided also, that in any case of appeal the court of quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings by writ of certiorari or otherwise, into the said court of Queen's Bench.

Appeals under this Act to be to quarter sessions.

**XLI.** The forms contained in the Schedule to this Act annexed, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended.

Forms to be used as in Schedule.

**XLII.** The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being.

As to protection of local authority and its officers.

**XLIII.** Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any com-

Act not to impair jurisdiction of sewers commissioners.

or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

missioners of sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act, intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from Steam Vessels above *London Bridge*," or the Common Lodging Houses Act, the Act for the regulation of municipal corporations, the Public Health Act, or any improvent Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any byelaws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to affect navigation of rivers or canals.

XLIV. Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act, shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Saving as to rights of millowners.

XLV. No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person.

Short title.

XLVI. In citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for *England*, 1855."

## SCHEDULE OF FORMS.

## FORM (A.)

*Order of Justices for Admission of Officer of Local Authority to inspect private Premises.*

Whereas [*describe the local authority*] have by their officer [*naming him*] made application to me A. B., one of her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer hath made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1856, viz. [*describe nuisance*], exists on private premises at [*describe situation of premises so as to identify them*], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act and refused:

Now, therefore, I the said A. B. do hereby require you to admit the said [*name the local authority*], [*or the officer of the said (local authority)*], for the purpose of inspecting the said premises.

Dated this — day of —, 18—.

A. B.

## FORM (B.)

*Notice of Nuisance.*

To the local authority [*describing it*].

I [*or we*], the person aggrieved by the nuisance hereinafter described [*or the undersigned and described inhabitant householders, sanitary inspector, or other officer (describing him)*], do hereby give you notice, that there exists in or upon the [*dwelling house, yard, &c., as the case may be*], situate at — [*giving such description as may be sufficient to identify the premises*], in the parish of —, in your district, under the Nuisances Removal Act, 1855, the following nuisance, videlicet, [*describing the nuisance, as the case may be; for instance, a dwelling house or building a nuisance or injurious to health for want of a privy or drain or sufficient means of ventilation, or so dilapidated or so filthy as to be a nuisance or injurious to health, or for further instance, a ditch, or drain so foul as to be a nuisance or injurious to health, or an accumulation of —, a nuisance or injurious to health, &c., or swine so kept as to be a nuisance or injurious to health; and that such nuisance is caused by [naming the person by whose act or default the nuisance is caused, or by some person unknown]*].



*Nuisances Removal Act.*

Dated this — day of —, in the year of our Lord One thousand eight hundred and —.

[Signed by Complainant under Section 10.]

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FORM (C.)

*Notice to Owner or Occupier of Entry for Examination.*

To the owner [or occupier, *as the case may be,*] of [describe the premises situate at] [insert a description sufficient to identify the premises].

Take notice, that under the Nuisances Removal Act for England, 1855, the [local authority, naming it,] in whose district under the said Act the above premises are situate, have received a notice from [name complainant], stating that in or upon the said premises [insert the cause of nuisance as set forth in the notice].

And further take notice, That after the expiration of twenty-four hours from the service of this notice the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this — day of —, in the year of our Lord One thousand eight hundred and —.

A. B.

The officer appointed by the [local authority] to take proceedings under the Nuisances Removal Act for England, 1855.

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FORM (D.)

*Summons.*

To the owner or occupier of [describe premises] situate at [insert such a description as may be sufficient to identify the premises], or to A. B. of —.

County of —, [or borough of —, &c. or district of —, or as the case may be,] to wit.	}	You are required to appear before two of her Majesty's justices of the peace [or one of the magistrates of the police courts of the metropolis, or the stipen- diary magistrate] of the county [or
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*other jurisdiction*] of —, at the petty sessions [*or court*] holden at —, on the — day of — next, at the hour of — in the — noon, to answer the complaint this day made to me by — [*or by — on behalf of*] [*naming the local authority, as the case may be*], that in or upon the premises above mentioned [*or in or upon certain premises situate at No. — in the — street in the parish of —, or such other description or reference as may be sufficient to identify the premises*], in their district, under the Nuisances Removal Act for England, 1855, the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or owner*] of the said premises, or by you A. B. [*or in case the nuisance be discontinued, but likely to be repeated, say there existed recently, to wit, on or about the — day of —, on the premises, the following nuisance*] [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last-mentioned day been removed or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under the hand of me J. P., esquire, one of her Majesty's justices of the peace acting in and for the [*jurisdiction*] stated in the margin, or one of the magistrates of the police courts of the metropolis, or stipendiary magistrate of —, this — day of — in the year of our Lord One thousand eight hundred and —.

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FORM (E)

*Order of Justices for Removal of Nuisances by Owner, &c.*

To the owner [*or occupier*] of [*describe the premises*] situate [*give such description as may be sufficient to identify the premises*], or to A. B. of —, or to [*giving name of the local authority*], or to their servants or agents, and to all whom it may concern.

County of — [*or*] Whereas on the — day of — com-  
 borough, &c. of —, }  
 or district of —, or }  
 as the case may be. }  
 acting in and for the county [*or other jurisdiction*] stated in the margin, [*or before the undersigned, one of the magistrates of the police courts of the metropolis, or as the case may be,*] by [*or by — on behalf of*] [*the local authority, naming it, as the case may be*] that in or upon certain premises situate at —, in the district under the Nuisances Removal Act for England, 1855, of the complaints above named, the following nuisance existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or occupier*] of the said premises [*or was caused by A. B.*] (*If the nuisance*

*have been removed, say*, the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.)

And whereas —, the owner [*or occupier*] within the meaning of the said Nuisances Removal Act, 1855, [*or the said A. B.*] hath this day appeared before us justices, being two of her Majesty's justices in and for —, sitting in petty sessions at their usual place of meeting [*or before me, the said magistrate of the police courts of the metropolis, or as the case may be*], to answer, the matter of the said complaint [*or in case the party charged do not appear, say*, And whereas it hath been this day proved to our [*or my*] satisfaction that a true copy of a summons requiring the owner [*or occupier*] of the said premises [*or the said A. B.*] to appear this day before us [*or me*] —, hath been duly served according to the said Act :

Now upon proof here had before us [*or me*] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or occupier*] of the said premises [*or by the said A. B.*] we [*or I*], in pursuance of the said Act, do order the said owner [*or occupier*], *or A. B.* within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify the works to be done, as for instance, to cleanse, whitewash, purify, and disinfect the said dwelling house; or, for further instance, to cleanse or to cover or to fill up the said cesspool, &c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the justices that the nuisance is likely to recur on the premises say* [And we] [*or I*] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or occupier, or A. B.*] from [*here insert the matter of the prohibition, as for instance, from using the said house or building for human habitation until the same, in our judgment, is rendered fit for that purpose*].

And if the above order for abatement be not complied with, [*or if the above order of prohibition be infringed,*] then we [*or I*] do authorize and require you the said [*local authority, naming it,*] from time to time to enter upon the said premises, and to do all such works, matters, and things as may be necessary for carrying this order into full execution according to the Act aforesaid.

*In case the nuisance were removed before complaint, say*, [Now, upon proof here had before us that at or recently before the time of making the said complaint, to wit, on — as aforesaid the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [*or I*] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit, [*order of prohibition*]; and if this

order of prohibition be infringed, then we [or I] [*order on local authority to do works*].

Given under the hands and seals of us, two of her Majesty's justices of the peace in and for — [or the hand and seal of me, one of the magistrates of the police courts of the metropolis, *or as the case may be*], —, this — day of — in the year of our Lord One thousand eight hundred and —.

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FORM (F.)

*Order of Justices for Removal of Nuisance by Local Authority.*

To the town council, &c., *as the case may be.*

County, &c. } Whereas [*recite complaint of nuisance as in last*  
to wit. } *form*].

And whereas it hath been now proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [*as the case may be*]: Now we [or I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forth with to [*here specify the works to be done*].

Given, &c.

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FORM (G.)

*Order to permit Execution of Works by Owners.*

County of — [or ] Whereas complaint hath been made to borough of —, or me, *B. F.*, esquire, one of her Majesty's justices of the peace in and for metropolitan police } jesty's justices of the peace in and for district, or as the case } the county [or borough, &c.] of — may be,] to wit. } or one of the magistrates of the police courts of the metropolis, *or as the case may be*, or one of her Majesty's justices of the peace, *as the case may be*, of the county of —], by *A. B.*, owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling house [or building, *or as the case may be*], situate at [*insert such a description of the premises as may be sufficient to identify them*], in the parish of — in the said county [or borough, &c.], that *C. D.*, the occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said *C. D.* [*here describe the act of prevention gene-*

rally according to the circumstances; for instance thus, doth refuse to quit the said house, the same having by the order of justices been declared unfit for human habitation, or doth prevent the said *A. B.* from cleansing or whitewashing or purifying the said dwelling house, or erecting a privy or drain or breaking an aperture for ventilation, or cleansing a drain, ditch, gutter, watercourse, privy, urinal, cesspool, or ashpit which is a nuisance or injurious to health]. And whereas the said *C. D.* has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [describe the act or works to be done] is necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* [describe the act or works to be done] in manner required by the said Act.

Given under my hand and seal, this — day of — in the year of our Lord One thousand eight hundred and —.

E. F. (L. S.)

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FORM (H.)

*Summons for Nonpayment of Costs, Expenses, or Penalties.*  
Sect. 20.

To —, [describe the person from whom the costs, expenses, and penalties are due].

County of —, or } You are required to appear before two of  
borough of —, } her Majesty's justices of the peace, [or  
or district of —, } one of the magistrates of the police courts  
to wit. } of the metropolis, or the stipendiary magistrates] of the county [or other jurisdiction] of —, at the petty sessions [or court] holden at — on the — day of — next, at the hour of — in the — noon, to answer the complaint this day made to me by —, [or by —, on behalf of] [naming the local authority], that the sum of — pounds, being costs and expenses incurred by you under and in relation to a certain complaint touching [describe the nuisance], and an order of [describe the person making the order], duly made in pursuance of the Nuisances Removal Act for England, 1855, [if penalties are due, add, and also the sum of —, being the amount of penalties payable by you for disobedience of the said order,] remains unpaid and due from you.

Given under the hand of me, *J. P.*, esquire, one of her Majesty's justices of the peace acting in and for the [jurisdiction stated in the margin], [or one of the magistrates of the

police courts of the metropolis, or stipendiary magistrate of —,] the — day of —, in the year of our Lord One thousand eight hundred and —.

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FORM (I.)

*Order for Payment of Costs, Expenses, and Penalties. Sect. 20.*

To —, [*name the person on whom the order is made.*]

County, &c. } Whereas complaint has been made before us [or  
to wit. } me] for that [*recite the cause of complaint*].

And whereas the said [*naming the person against whom the complaint is made*] has this day appeared before us the said justices [or before me the said magistrate of the police courts of the metropolis, or as the case may be,] to answer this matter of the said complaint : [Or, in case the party charged do not appear, say],

And whereas it has been this day satisfactorily proved to us [or me] that a true copy of the summons requiring the said [*naming person charged*] to appear before us [or me] this day hath been duly served according to the said Act: Now, having heard the matter of the said complaint, we [or I] do adjudge the said [*naming the person charged*] to pay forthwith [or by instalments of —, payable respectively on or before the —] to the said [*naming the person or local authority to whom the costs adjudged are payable*], the sum of —, for costs in this behalf and to [*naming the person or authority to whom the expenses are payable*] the sum of —, for expenses in this behalf, [*if penalties are due, add, and the sum of —, for penalties incurred in relation to the premises,*] together with the sum of —, being the charges attending the application for this order and proceedings thereon; and if the said several sums, amounting in the whole to —, [or if any one of the said instalments,] be not paid within fourteen days after the same is due as aforesaid, we [or I] hereby order that the same be levied by distress and sale of the goods and chattels of the said —, and in default of sufficient distress in that behalf adjudge the said — to be imprisoned in the common gaol [or house of correction, as the case may be,] at —, in the said county, [or as the case may be,] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [or sum], and all costs and charges of the said distress [and of the commitment and carrying of the said — to the said house of correction or common gaol, or as the case may be,] shall be sooner paid.

Given under our [or my] hands, this — day of —, in the year of our Lord One thousand eight hundred and —, at —, in the [county, or as the case may be,] aforesaid.

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## FORM (K.)

*Warrant of Distress.* Sect. 20.

To the constable of —, and to all other peace officers  
in the said county [*or as the case may be*].

Whereas on — last past complaint was made before the undersigned, two of her Majesty's justices of the peace in and for the said county of [*or as the case may be*] [*or a magistrate of the police courts of the metropolis, or stipendiary magistrate, as the case may be*] for that [*&c., as in the order*]; and thereupon having considered the matter of the said complaint, we [*or I*] adjudged the said — [*set out from Form I. the adjudication of payment, and the order for distress and for imprisonment in default of distress*]: and whereas the time in and by the said order appointed for the payment of the said several sums of — and — hath elapsed, but the said — hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default; these are therefore to command you in her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of — days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the division of — in the said [*county, or as the case may be*], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said —; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under our [*or my*] hands and seal, this — day of —, in the year of our Lord One thousand eight hundred and —, at — in the [*county*] aforesaid.

(L. S.)

A. B.  
C. D.

## FORM (L.)

*Return of Proceedings under Nuisances Removal Act, 1855,  
by the [naming the local authority at length].*

*From 25th March 1855 to 25th March 1856.*

Date of notice.	By whom given.	Nature of Nuisance,	Proceedings taken.	Remarks:—with any special work done under the Act, without any notice.
16 April	The Inspector.	Foul drainage from house.	Owner put down good drain on summons, without justices' order.	Several houses being in a like position, the highway surveyor laid down a sewer in the old watercourse, and each house was charged a proportionate sum for the same, of which the highest sum was 10s.
18 April	Two neighbours.	Offensive cesspool.	Abated by local authority.	Renewed once; but penalty recovered, and no subsequent renewal attempted.

Dated this 26th day of March, 1856. [To be signed by the  
chairman of the local authority.]

18 & 19 VICT. CAP. 116.

*An Act for the better prevention of Diseases.*

[14th August, 1855.]

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," in so far as the same relate to the prevention or mitigation of epidemic, endemic, or contagious diseases, are defective, and it is expedient to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as the "Diseases Short title. Prevention Act, 1855."

II. The local authority for executing this Act shall be the Local authority acting in execution of any general Act in force for the time being for the removal of nuisances. Local authority for execution of Act.

III. The expenses incurred in execution of this Act shall be borne out of the rates or funds administered by such local Act. Expenses of Act.



authority, under the provisions and for the purposes of any such general Act as is referred to in the preceding section.

Power of  
entry.

IV. The local authority and their officers shall have power of entry for the purposes of this Act, and for executing or superintending the execution of the regulations and directions of the general board, issued under this Act.

Power to  
privy council  
to issue  
orders that  
provisions  
herein con-  
tained for  
prevention of  
diseases may  
be put in  
force.

V. Whenever any part of *England* appears to be threatened with or is affected by any formidable epidemic, endemic or contagious disease, the lords and others of her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of her Majesty's principal secretaries of state, being one), may, by order or orders to be by them from time to time made, direct that the provisions herein contained, for the prevention of diseases, be put in force in *England*, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts to which any such order or orders extend, and in like manner, revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of her Majesty's privy council, or of any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of her Majesty's privy council, and shall be published in the *London Gazette*; and such publication shall be conclusive evidence of such order, to all intents and purposes.

Power to  
general  
board of  
health to  
issue regula-  
tions to carry  
out such  
provisions.

VI. From time to time after the issuing of any such order as aforesaid, and whilst the same continues in force, the general board of health may issue directions and regulations, as the said board think fit—

For the speedy interment of the dead :

For house to house visitation :

For the dispensing of medicines, guarding against the spread of disease, and affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases, such medical aid and such accommodation as may be required :

Local extent  
and duration  
of regula-  
tions of  
general  
board.

And from time to time, in like manner, may revoke, renew, and alter any such directions and regulations as to the said board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of disease shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts, and then to such parts as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such order, be applicable to the same parts.

VII. Every such direction and regulation as aforesaid, when issued, shall be published in the *London Gazette*, and the *Gazette* in which such direction or regulation was published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes.

Publication of such regulations.

VIII. The local authority shall superintend and see to the execution of such directions and regulations, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating such disease, and for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require.

The local authority to see to the execution of such regulations, &c. ;

IX. The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation.

and may direct prosecutions for violating the same.

X. Every order of her Majesty's privy council, and every direction and regulation of the general board of health, under this Act, shall be laid before both houses of parliament, forthwith upon the issuing thereof, if parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next sessions of parliament.

Orders of council, directions, and regulations to be laid before parliament.

XI. Orders in council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts contained, in *Great Britain*, may extend to parts and arms of the sea lying within the jurisdiction of the Admiralty : and the board of health for *England* may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid, as upon inland waters.

Order in council may extend to parts and arms of the sea.

XII. Whenever, in compliance with any regulation of the general board of health, which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being, for the relief of the poor shall perform any medical service on board of any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick ; and if such services shall be rendered by any medical practitioner who is not a union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of

Medical officer of unions and others entitled to costs of attending sick on board vessels, when required by orders of general board of health.

receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case of disputes in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined summarily, at the place where the dispute arises, as in case of seamen's wages not exceeding fifty pounds, according to the provisions of the law in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place, for attendance on patients of the like class or condition as those in respect of whom the charge is made.

Authentica-  
tion of di-  
rections and  
regulations  
of general  
board of  
health.

XIII. The directions and regulations of the general board of health under this enactment, shall be under the seal of the said board, and the hand of the president or two or more members thereof; and any copy of such regulations purporting to bear such seal and signature, whether the said signature and seal be respectively impressed and written, or printed only, shall be evidence in all proceedings in which such regulations may come in question.

Penalty for  
obstructing  
execution of  
Act.

XIV. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by the general board of health as aforesaid, shall be liable for every such offence to a penalty not exceeding five pounds, to be appropriated in or towards the defraying the expenses of executing this Act.

Certain pro-  
visions of  
Nuisances  
Removal Act  
to apply to  
this Act.

XV. The provisions of any general Act in force for the removal of nuisances, with regard to the service of notices, the proof of orders or resolutions of the local authority, and the recovery of penalties, shall extend and apply to this Act.

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21 & 22 VICT. CAP. 97.

*An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health.*

[2d August 1858.]

20 & 21 Vict.  
c. 88.

WHEREAS under an Act of the last Session of Parliament, chapter thirty-eight, the general board of health stands continued only until the first day of *September* one thousand eight hundred and fifty-eight: And whereas it is expedient to vest in the privy council certain powers now vested in the said

general board of health, and certain other powers for the protection of the public health: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

I. In addition to the powers vested in Her Majesty's most honourable privy council for the protection of the public health, all powers now vested in the general board of health under the "Diseases Prevention Act, 1855," shall upon the discontinuances of the said board, be vested in the said privy council, and the provisions of the said Act having reference to the general board of health and the regulations and directions issued by them, except section thirteen, shall be construed as referring to such privy council and the regulations and directions issued by them.

Powers of general board of health under 18 & 19 Vict. c. 116, added to those of the privy council.

II. The privy council may from time to time issue such regulations as they think fit for securing the due qualification of persons to be hereafter contracted with by guardians and overseers of unions and parishes in England for the vaccination of persons resident in such unions and parishes, and for securing the efficient performance of vaccination by the persons already or hereafter to be contracted with as aforesaid; and any money from time to time provided by parliament for or towards defraying the expenses of the national vaccine establishment, or otherwise providing for the supply of vaccine lymph, shall be applied under the directions of the privy council.

Certain powers in relation to public vaccination vested in privy council.

III. The privy council may from time to time cause to be made such inquiries as they see fit in relation to any matters concerning the public health in any place or places, and to the observance of the regulations and directions issued by them under this Act.

Privy council may direct inquiries.

IV. The powers of appointing and removing a medical officer, vested in the general board of health under the General Board of Health Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the privy council; and the person who at the time of the cesser of the general board of health may be their medical officer shall become the medical officer of the privy council, subject to such power of removal as aforesaid; and the privy council may also from time to time employ such other persons as they deem necessary for the purposes of this Act; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds per annum, and to such other persons such remuneration and allowances, as the commissioners of Her Majesty's treasury may direct; and such salary, remuneration, and allowances shall be paid out of such monies as shall be provided by parliament.

Privy council to appoint medical officer, &c.

Medical officer to report annually as to the execution of this Act.

V. The medical officer shall from time to time report to the privy council in relation to any matters concerning the public health or such matters as may be referred to him for that purpose, and shall, in or before the month of *March* in each year, report to the privy council the proceedings had and taken under this Act during the preceding year ending on the thirty-first day of *December*.

Reports to be laid before parliament.

VI. The annual report made by the medical officer as aforesaid, shall be laid before both houses of parliament within fourteen days after the making thereof, if parliament be sitting, and if not, then within fourteen days after the next meeting of parliament, together with all other reports made by him under this Act, during the period to which such annual report relates.

As to the making and authentication of orders, &c.

VII. All powers vested in the privy council by this Act may be exercised by any three or more of the lords and others of the privy council, the vice president of the committee of the said privy council on education being one of them, and all orders, regulations, directions, and acts of the privy council under this Act shall be sufficiently made and signified by a written or printed document, signed, by one of the clerks of the privy council, or such officer as may be appointed by the privy council in this behalf; and all orders, regulations, directions, and acts made or signified by any written or printed document, purporting to be so signed shall be deemed to have been duly made, issued, and done by the privy council, and every such document shall be received in evidence in all courts and before all justices and others without proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the privy council.

Proceedings for penalties under vaccination Acts.

VIII. Proceedings for penalties under the Acts for the time being in force on the subject of vaccination may be taken on the complaint of any registrar employed for the registration of births, deaths, and marriages, public vaccinator, or officer authorized by the board of guardians or by the overseers respectively, and the cost of such proceedings shall be defrayed out of the common fund of the union, or out of the poor rates of any parish not included in a union.

Short title and continuance of Act.

IX. This Act may be cited as "The Public Health Act, 1858," and shall be in force only until the first day of *August* one thousand eight hundred and fifty-nine.

## 1. STATUTES.

## 3 GEO. IV. CAP. 126.

*An Act to Amend the General Laws now in being for regulating Turnpike Roads in that part of Great Britain called England.*

[6th August, 1822.]

CXIV. And be it further enacted, that it shall be lawful for the surveyor of every turnpike road, and such person as he or they shall appoint, to remove and prevent all annoyances on every part of every turnpike road, by filth, dung, ashes, rubbish or any other matter or thing whatsoever, being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof, and to dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within twelve hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate; and to turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances, to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered; and if after the removal of any of the said annoyances, any person shall offend in the like kind, every such person shall, for every such offence, forfeit and pay any sum not exceeding five pounds.

Annoyances removed.

Owners not removing.

Watercourse and drains may be turned.

Owners not cleaning to pay the costs, &c.

Second offence, penalty.

CXV. And be it further enacted, that in all cases where any gutter, drain, sink, sewer, or under drain made or hereafter to be made under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road, or conveying water, filth, or other matters from

Expenses of repairing drains, &c. in towns to be defrayed

equally between trustees and inhabitants.

expenses of repairs laid before two justices, who shall proportion amount to be paid by the parties.

If not paid, distress.

the houses or premises of the inhabitants of any town, hamlet, village, street or place, and no specific mode of repair, or persons liable to the expense of maintaining the same shall be appointed, the expense of maintaining and repairing such gutter, drain, sink, sewer, or under drain shall be borne and defrayed equally or in proportions by the trustees or commissioners of such turnpike road, and the inhabitants of the town, hamlet, village, street or place using the same; and in order to ascertain the proportion and recover such expenses the surveyor of the turnpike road under, at the sides, or near to which such gutter, drain, sink, sewer, or under drain shall be situated, shall, as often as shall be requisite repair the same, and shall then make out an account of the costs and expenses of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where such gutter, drain, sink, sewer, or under drain, or so much thereof as shall be repaired, shall lie; and it shall and may be lawful for the said justices, and they are hereby authorized and empowered to examine the accounts and statements to be produced to them, and to inquire as to the persons using such gutter, drain, sink, sewer, or under drain, and to proportion the amount to be paid by the trustees or commissioners of the turnpike road and by the inhabitants and persons using such gutter, drain, sink, sewer, or under drain respectively, and to fix and ascertain the amount of such proportion as they the said justices shall deem just and reasonable, to be paid by the said several parties respectively; and if any person or persons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace acting for the county or place where such person or persons shall reside.

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## 3 &amp; 4 WILL. IV. CAP. 90.

*An Act to repeal an Act of the Eleventh Year of his late Majesty King George the Fourth, for the lighting and watching of Parishes in England and Wales, and to make other Provisions in lieu thereof.*

[28th August, 1833.]

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L. And be it further enacted, That if any body or bodies politic or corporate, company or companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, shall at any time empty, drain, or convey, cause, or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond, or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein, or any part thereof, shall or may be spoiled, fouled, or corrupted, then and in every such case any such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, so offending as aforesaid, shall forfeit and pay for every such offence the sum of two hundred pounds; and such penalty or forfeiture shall and may be sued for and recovered, together with full costs of suit, in any of his Majesty's courts of law, by regular or summary action of debt or on the case, or by bill, plaint, or information, wherein no essoin, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same: Provided always, that no such penalty or forfeiture shall be recoverable unless the same be sued for within six calendar months from and after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined: Provided also, that over and above and in addition to the said penalty of two hundred pounds, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquid, or noisome or offensive liquid, substances, or things, shall be emptied, drained, conducted, or conveyed, or caused



or suffered to run or flow, in manner aforesaid, into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch, communicating with any of them, or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, company or companies of proprietors, or any of them, or other the person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within any parish or part of a parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, shall not, within twenty-four hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from running, or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing from being done as aforesaid, then and in every such case the said body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of twenty pounds for each and every day such washings, waste liquids, or noisome or offensive liquids, substances, or things, shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow in manner aforesaid, or such other annoyance, nuisance, injury or damage, act or thing shall be so done or caused to be done as aforesaid; and such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the justice before whom the conviction shall take place, shall have sustained any annoyance, injury or damage by any such act so done or committed.

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## 10 VICT. CAP. 14.

*An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating markets and fairs.* [23d April, 1847.]

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XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house, and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty for selling or exposing for sale unwholesome meat, &c.

Penalty on obstructing inspector.

• • • • •

XIX After the expiration of ten days from the publication and posting of such notice no person shall slaughter any cattle or dress any carcase for sale as human food or food of man, in any place within the limits of the special Act other than a slaughter-house which was in use as such before and at the time of the passing of the special Act, and has so continued ever since, or the slaughter-houses made in pursuance of this and the special Act; and every person who shall, after such notice as aforesaid, slaughter any such cattle or dress for sale any such carcase within the limits of the special Act in any place other than one of such slaughter-houses, shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty on slaughtering cattle, &c. elsewhere than in an authorized slaughter-house.

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## 10 VICT. CAP. 15.

*An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making of Gasworks for supplying towns with gas.*

[23d April, 1847.]

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And with respect to the provisions for guarding against

fouling water, or other nuisance from the gas, be it enacted as follows :—

Penalty on undertakers for causing water to be corrupted.

XXI. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior court within six months.

XXII. The said penalty of two hundred pounds shall be recovered with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily penalty during the continuance of the offence.

XXIII. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

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#### '10 VICT. CAP. 16.

*An Act for consolidating in one Act certain provisions usually contained in Acts with respect to the constitution and regulation of bodies of commissioners appointed for carrying on undertakings of a public nature.* [23d April 1847.]

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Proceedings to be entered in a book,

LV. The commissioners shall cause entries of all the proceedings of the commissioners, and of every committee ap-

pointed by them, with the names of the commissioners who shall attend each meeting, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the clerk under the superintendence of the commissioners, and every such entry shall be signed by the chairman of the meeting at which the proceeding took place, and such entry so signed shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such meeting having been duly convened or held; or of the persons attending such meeting having been or being commissioners or members of committees respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary is proved; and such books shall at all reasonable times be open to the inspection of any of the commissioners, and of any mortgagees of the rates or property of the commissioners.

and, when signed, shall be received in evidence.

Such books to be open to inspection.

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#### 10 & 11 VICT. CAP. 34.

*An Act for consolidating in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns.*

[21st June, 1847.]

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IX. The commissioners shall appoint some person, by the title of "Inspector of Nuisances," to superintend and enforce the due execution of all duties to be performed by the scavengers appointed under this or the special Act, and to report to the commissioners any breach of the provisions of this or the special Act, or of any Act incorporated therewith, or of the byelaws, rules and regulations of the commissioners, and the existence of any nuisances within the limits of the special Act; and the commissioners shall duly publish the name of any inspector of nuisances appointed by them, and shall require him to provide and keep a book in which shall be entered all reasonable complaints made by any householder of the district within the limits of the special Act of any breach of the provisions of this or the special Act, or of any Act incorporated therewith, or of the byelaws, rules, and regulations made by the commissioners for the preservation of due order and cleanliness or for the suppression of nuisances; and the inspector of nuisances shall forthwith inquire into the truth of

Commissioners shall appoint an inspector of nuisances.

such complaints, and report upon the same to the commissioners at their next meeting; and such report and the order of the commissioners thereon shall be entered in the said book, which shall be kept at the office of the commissioners, and shall be open at all reasonable times to the inspection of any inhabitant of the said district or other person interested; and it shall be the duty of such inspector of nuisances, subject to the direction of the commissioners, to make complaints before justices, and take legal proceedings for the punishment of any person who has committed any offence under this or the special Act, or under any byelaws made by virtue thereof.

Surveyor and  
inspector of  
nuisances  
may be same  
person.

X. The commissioners may, if they think fit, appoint the same person to be both surveyor and inspector of nuisances.

Commission-  
ers to provide  
offices for  
surveyor and  
inspector.

XI. The commissioners shall provide offices for the use of the said surveyor and inspector in some convenient place within the limits of the special Act, either in connexion with their own office or otherwise, as may be most convenient, and shall cause due notice thereof to be given twice at the least in some newspaper circulating within the said limits.

Power to ap-  
point, subject  
to approval,  
an officer of  
health.

XII. The commissioners may, if they think fit, appoint, subject to the prescribed approval, or where no approval is prescribed, subject to the approval of one of her Majesty's principal secretaries of state, a person of competent skill and experience, who shall be styled "The Officer of Health," whose duty it shall be to ascertain the existence of diseases within the limits of the special Act, especially epidemics and contagious diseases, and to point out any nuisances or other local causes likely to cause and continue such diseases, or otherwise injure the health of the inhabitants, and to point out the best means for checking or preventing the spread of such diseases within the limits aforesaid, and also the best means for the ventilation of churches, chapels, schools, registered lodging houses, and other public buildings within the limits aforesaid, and from time to time as required by the commissioners to report to them upon the matters aforesaid, and to perform any other duties of a like nature which may be required of him; and the commissioners with the same approval which is necessary for the appointment of the officer of health, shall fix the salary to be paid to such officer, and shall pay such salary out of the rates to be levied under this or the special Act; and the commissioners, with the like approval, may discontinue such office, or remove any such officer of health.

\* \* \* \* \*

And with respect to the prevention of nuisances, be it enacted as follows :—

XCIX. No person shall suffer any waste or stagnant water to remain in any cellar or other place within any house belonging to or occupied by him within the limits of the special Act, so as to be a nuisance ; and every person who so suffers any such water to remain for forty-eight hours after receiving notice from the commissioners to remove the same, and every person who allows the contents of a privy or cess-pool to overflow or soak therefrom, to the annoyance of the occupiers of any adjoining property, shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which such nuisance continues ; and the commissioners may cleanse and drain out any stagnant pools, ditches, or ponds of water within the limits of the special Act, and abate any such nuisance as aforesaid, and for that purpose may enter by their officers and workmen, into and upon any building or land within the said limits at all reasonable times, and do all necessary acts for any of the purposes aforesaid ; and the expenses incurred thereby shall be paid by the person committing such offence, or occupying the building or land whence such annoyance proceeds, and if there be no occupier, by the owner of such building or land, and shall be recoverable as damages.

Stagnant pools of water and other annoyances to be removed.

C. If the dung or soil of any stable, cowhouse, or pigstye, or other collection of refuse matter, elsewhere than in any farmyard be at any time allowed to accumulate within the limits of the special Act for more than thirty days, or for more than seven days after a quantity exceeding one ton has been collected in any place not allowed by the commissioners, such dung, soil, or refuse, if not removed within forty-eight hours after notice from any officer of the commissioners for that purpose, shall become the property of the commissioners, and they, or any person with whom they have at that time any subsisting contract for the removal of refuse, may sell and dispose of the same, and the money thence arising shall be applied towards the purposes of the special Act.

Regulations to prevent accumulation of dung, &c.

CI. If at any time the officer of health, or, if for the time being there be no officer of health, any two surgeons or physicians, or one surgeon and one physician, residing within the limits of the special Act, certify under his or their hand to the commissioners that any accumulation of dung, soil, or filth, or other noxious or offensive matter, within the limits of the special Act, ought to be removed, as being injurious to the health of the inhabitants, the clerk to the commissioners shall forthwith give notice to the owner or reputed owner of such dung, soil, or filth, or to the occupier of the land where

On certificate of the officer of health, filth to be removed.

the same are, to remove the same within twenty-four hours after such notice; and in case of failure to comply with such notice the said dung, soil or filth shall thereupon become vested in the commissioners, and they, or any person with whom they have at that time contracted for the removal of all such refuse, may sell and dispose of the same, and the money thence arising shall be applied towards the purposes of the special Act.

Houses to be whitewashed, and purified, on certificate of officer of health, &c.

CII. If at any time the officer of health, or if for the time being there be no officer of health, any two surgeons or physicians, or one surgeon and one physician, residing within the said limits, certify under his or their hands to the commissioners that any house or part of any house or building within the limits of the special Act is in such a filthy or unwholesome condition that the health of the inmates or of the neighbours is thereby affected or endangered, or that the whitewashing, cleansing or purifying of any house or building, or any part thereof, would tend to prevent or check infectious or contagious disease therein, or that any drain, privy or cesspool is in such a defective state that the health of the neighbours is thereby affected or endangered, the commissioners shall order the occupier of such house or part thereof, to whitewash, cleanse, and purify the same, and the owner of such drain, privy or cesspool to amend the condition thereof, in such manner and within such time as the commissioners deem reasonable; and if such occupier or owner do not comply with such order he shall be liable to a penalty not exceeding ten shillings for every day's neglect thereof; and in such case the commissioners may cause such house or any part thereof to be whitewashed, cleansed, and purified, or the condition of such drain, privy, or cesspool to be amended, and may recover the expense thereof from such occupier or owner in the same manner as damages.

No interment in any grave without leaving two feet six inches clear of soil above the coffin.

CIII. No coffin containing a corpse shall be buried in any grave within the limits of the special Act, not being a vault or catacomb, without at least thirty inches of soil between the ordinary surface of such burial ground and the upper side of the coffin; and if the person having the preparation or the immediate charge of the preparation of the grave to receive such coffin, permit the coffin to be buried in such grave, or if the person having the control of the burial ground knowingly permit any coffin to be buried in any grave in which there is not left after the burial thereof thirty inches at the least of soil, measuring from the ordinary surface of such burial ground to the upper side of the coffin, the person having the immediate charge of the preparation of the grave, and the person having the control of the burial ground in which such burial is made, shall for every such offence be liable to a penalty not exceeding five pounds.

CIV. If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling or crushing bones, or any pigstye, necessary house, dunghill, manure heap, or any manufactory, building, or place of business within the limits of the special Act, be at any time certified to the commissioners by the inspector of nuisances or officer of health, or if for the time being there be no inspector of nuisances or officer of health, by any two surgeons or physicians, or one surgeon and one physician, to be a nuisance or injurious to the health of the inhabitants, the commissioners shall direct complaint to be made before two justices; and any justice may summon before any two justices the person by or on whose behalf the work complained of is carried on, and such justices shall inquire into such complaint, and they may, by an order in writing under their hands, order such person to discontinue or remedy the nuisance within such time as to them shall appear expedient: Provided always, that if it appear to such justices that in carrying on any business complained of the best means then known to be available for mitigating the nuisance or the injurious effects of such business have not been adopted, they may suspend their final determination, upon condition that the person so complained against shall undertake to adopt within a reasonable time such means as the said justices shall judge to be practicable and order to be carried into effect for mitigating or preventing the injurious effects of such business.

Justices may order nuisances to be abated.

CV. If any such nuisance, or the cause of any such injurious effects as aforesaid, be not discontinued or remedied within such time as shall be ordered by the said justices, the person by or on whose behalf the business causing such nuisance is carried on shall be liable to a penalty not exceeding five pounds for every day during which such nuisance shall be continued or unremedied after the expiration of such time as aforesaid: Provided always, that when any person who thinks himself aggrieved by any such order shall, according to the provisions of this or the special Act, appeal against any such order, such person shall not be liable to discontinue or remedy the nuisance or cause of the injurious effects mentioned therein, or to pay any penalty, until after the expiration of five days after the determination of such appeal and the confirmation of such order, unless such appeal cease to be prosecuted.

Penalty for disobedience of orders of justices.

CVI. The commissioners may direct any prosecution for any public nuisance whatsoever, created, permitted, or suffered within the limits of the special Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this or the special Act, or of any Act incorporated therewith,

Commissioners to order costs of prosecutions to be paid out of the rates.



and may order the expenses of such prosecution or other proceedings to be paid out of the rates authorized to be imposed under the provisions of this and the special Act.

Act not to  
affect nul-  
sances at  
common law.

CVII. Nothing in this Act contained shall be construed to render lawful any act or omission on the part of any person which is, or but for this Act would be deemed to be a nuisance at common law, nor to exempt any person guilty of nuisance at common law from prosecution or action in respect thereof, according to the forms of proceeding at common law, nor from the consequences upon being convicted thereof.

\* \* \* \*

And with respect to entry by the commissioners or their officers in execution of this or the special Act, be it enacted as follows :—

Commission-  
ers empower-  
ed to enter  
upon lands  
for the pur-  
poses of this  
Act.

CXLIV. The commissioners shall, for the purposes of this or the special Act, have power by themselves or their officers to enter at all reasonable hours in the daytime into and upon any buildings or lands within the limits of the special Act, as well for the purpose of inspection as for the purpose of executing any work authorized to be executed by them under this or the special Act, or any Act incorporated therewith, without being liable to any legal proceedings on account thereof: Provided always, that, except when herein or in the special Act it is otherwise provided, the commissioners or their officers shall not make any such entry, unless with the consent of the occupier, until after the expiration of twenty-four hours' notice for that purpose given to the occupier.

\* \* \* \*

And with respect to insuring the execution of the works by this or the special Act required to be done by the owners or occupiers of houses or lands, be it enacted as follows :—

As to service  
of notice on  
owners and  
occupiers of  
buildings  
and lands.

CXLVI. Where under this or the special Act any notice is required to be given to the owner or occupier of any building or land, such notice, addressed to the owner or occupier thereof, as the case may require, may be served on the occupier of such building or land, or left with some inmate of his abode, or, if there be no occupier, may be put up on some conspicuous part of such building or land; and it shall not be necessary in any such notice to name the occupier or the owner of such building or land: Provided always, that when the owner of any such building or land, and his residence are known to the commissioners, it shall be the duty of the commissioners if such owner be residing within the limits of

the special Act, to cause every notice required to be given to the owner to be served on such owner, or left with some inmate of his abode; and if such owner be not resident within the limits of the special Act, they shall send every such notice by the post, addressed to the residence of such owner.

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# 11 & 12 VICT. CAP. 63.

## *An Act for Promoting the Public Health.*

[31st August, 1848.]

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**XL.** And be it enacted, that the local board of health may, from time to time, if they shall think fit, appoint a fit and proper person, being a legally qualified medical practitioner or a member of the medical profession, to be called the officer of health, who shall be removable by the said local board, and shall perform such duties as the said general board shall direct; A medical officer may be appointed.

And the same person may be officer of health for two or more districts; He may act for more than one district.

And the local board or boards of health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates to be levied under this Act, such remuneration by way of annual salary or otherwise as the said local board or boards may by order in writing determine and appoint, and (in case of a joint appointment for two or more districts) in such proportions as the said general board may by order in writing determine and appoint: Remuneration.

Provided always, that the appointment and removal of the officer of health shall be subject to the approval of the said general board. Appointment, &c. subject to approval.

\* \* \* \*

**L.** And be it enacted, that if it shall appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census, in which this Act shall not have been applied by order in council, or provisional order as aforesaid, assembled at a public meeting to be called as is hereinafter provided, that it would contribute to the health and convenience of the inhabitants— In parishes, &c. of less than 2,000 inhabitants, and in which the Act has not been applied by order in council or provisional order,—

That any pond, pool, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter or thing of an offensive nature, or likely to pumps, &c.

may be provided and open ditches covered, &c. by churchwardens and overseers, upon vote of the inhabitants alone at two public meetings :

Plan and estimate to be procured :

Approval at second meeting : Expenses charged upon poor-rates.

Notice previously to the public meetings.

be prejudicial to health, should be drained, cleansed, covered, or filled up,—

Or that a sewer should be made or improved, a well dug, or a pump provided, for the public use of the inhabitants,—  
The churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works, or any of them, and shall lay the same before another public meeting of such rated inhabitants, to be called as hereafter provided ;

And if the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at such last-mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place :

Provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act, and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

\* \* \* \* \*

Local board to provide that drains, &c. do not become a nuisance.

Surveyor may be authorized to enter premises in order to inspect and lay open drains, &c.

LIV. And be it enacted, that the local board of health shall see and provide that all drains whatsoever, and the waterclosets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health :

And the surveyor may—

By written authority of the said local board (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, water-closet, privy, cesspool, or ashpit in respect of which application is made is a nuisance or injurious to health, but not otherwise),—

And after twenty-four hours' notice in writing (or in case of emergency without notice), to the occupier of the premises to which such drain, watercloset, privy, cesspool, or ashpit is attached or belongs,—

Enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, watercloset, privy, cesspool, or ashpit ;

If drains, &c. be found in proper order, damage to be made good ;

And if the drain, water-closet, privy, cesspool, or ashpit, in respect of which such examination is made, be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said local board ;

if not, local board to

But if upon such examination such drain, water-closet,

privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment, he shall cause the ground to be closed, and the said local board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works;

require the execution of the necessary works, &c.;

And if such notice be not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the said local board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said local board, shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided.

and in case of default owner or occupier liable to penalty, and local board may execute the works at the expense of either of them.

\* \* \* \* \*

LVIII. And be it enacted, that the local board of health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature or likely to be prejudicial to health;

Local board to see that offensive ditches, &c. are cleansed or covered.

And they shall cause written notice to be given to the person causing any nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require;

And to require persons causing the nuisance, or the owner or occupier to cleanse, &c.

And if the person to whom such notice is given fail to comply therewith, the said local board shall execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner, or by order of the said local board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided;

And in case of default, to execute the necessary works at his expense.

Provided always, that the said local board may order that the whole or a portion of the expenses incurred in respect of any such last-mentioned works be defrayed out of the special or general district rates to be levied under this Act; and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly;

Expenses may at board's discretion be charged upon district, &c.

LIX. And be it enacted, that whosoever—

Keeps any swine or pigstye in any dwelling house, or so as to be a nuisance to any person,—

Or suffers any waste or stagnant water to remain in any

Penalties for keeping swine, &c., in improper situations,—

allowing waste water to remain in cellars, or privies, &c. to overflow.

cellar or place within any dwelling house for twenty-four hours after written notice to him from the local board of health to remove the same,—

And whosoever allows the contents of any watercloset, privy, or cesspool to overflow or soak therefrom,—

Shall, for every such offence, be liable to a penalty not exceeding forty shillings, and to a further penalty of five shillings for every day during which the offence is continued :

Such nuisances to be abated by local board.

And the said local board shall abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided :

Removal of offensive accumulations, &c. upon notice from inspector of nuisances.

And if at any time it appear to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same ; and if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the said local board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned.

Upon certificate of officer of health, &c. that a house, &c. is in an unwholesome condition, local board to require that the same be whitewashed, &c. under penalties.

LX. And be it enacted, that if upon the certificate of the officer of health (if any), or of any two medical practitioners, it appear to the local board of health—

That any house, or part thereof, is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby,—

Or that the whitewashing, cleansing, or purifying of any house, or part thereof, would tend to prevent or check infectious or contagious disease,—

The said local board shall give notice in writing to the owner or occupier of such house, part thereof, or to whitewash, cleanse, or purify the same, as the case may require ;

And if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default ; and the said local board may, if they shall think fit, cause such house, building or part thereof, to be whitewashed, cleansed or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided.

Penalties :

And in case of default local board may whitewash, &c. at the expense of owner or occupier.

\* \* \* \* \*

LXIII. And be it enacted, that the inspector of nuisances may, and he is hereby empowered, at all reasonable times,

with or with or without assistance, to enter into and inspect any shop, building, stall or place kept or used for the sale of butcher's meat, poultry, or fish, or as a slaughter house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish which may be therein; and in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same may be seized;

*nuisances to enter places used for sale of butcher's meat, &c. Meat, &c. unfit for food to be seized, &c.*

And if it appear to a justice, upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food;

And the person to whom such animal, carcase, meat, poultry, game, flesh, or fish belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every animal or carcase, fish, or piece of meat, flesh, or fish, or any poultry or game so found; which penalty may be recovered before two justices in the manner hereinafter provided with respect to penalties, the recovery whereof is not expressly provided for.

*Persons having custody of it to be liable to penalties.*

LXIV. And be it enacted, that the business of a blood boiler, bone boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap boiler, tallow melter, tripe boiler, or other noxious or offensive business, trade, or manufacture, shall not be newly established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent of the local board of health,—

*Offensive trades newly established to be subject to regulation of local board of health.*

Unless the said general board shall otherwise direct;

And whosoever offends against this enactment shall be liable, for each offence, to a penalty of fifty pounds, and a further penalty of forty shillings for each day during which the offence is continued:

*Appeal to the general board.*

And the said local board may from time to time make such bye-laws with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof.

*Bye-laws with respect to offensive trades.*

LXV. And be it declared and enacted, that nothing in this Act shall be construed to render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

*Act not to affect present law as to nuisances.*

LXVI. and be it enacted, that it shall not be lawful to keep any common lodging house unless the same be registered as next hereinafter mentioned; and the local board of health shall cause a register to be kept, in which shall be entered

*To be registered, &c.*

the name of every person applying to register any common lodging house kept by him, and the situation of every such house;

Local board to make bye-laws for regulating common lodging-houses,

And the said local board shall from time to time make bye-laws—

For fixing the number of lodgers who may be received into each house so registered;

For promoting cleanliness and ventilation therein;

And with respect to the inspection thereof; and the conditions and restrictions under which such inspection may be made;

and may authorize entry of any such lodging house.

And the person keeping any such lodging house shall give access to the same when required by any persons who shall produce the written authority of the said local board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process;

Expense of purifying, &c.

And the expenses incurred by the said local board, in so introducing or using any disinfecting process, shall be recoverable by them in a summary manner from the person keeping the lodging house in which the same shall have been used or introduced;

Penalty for failing to register, or refusing to allow inspection, &c.

And whosoever shall receive lodgers in any common lodging house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon, any person authorized by the said local board as last aforesaid, shall for every such offence be liable to a penalty not exceeding forty shillings.

#### 18 & 19 VICT. CAP. 120.

#### *An Act for the better local management of the Metropolis.*

[14th August, 1855.]

\* \* \* \*

District board to cause offensive ditches, drains, &c., to be cleansed or covered.

LXXXVI. Every vestry and district board shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their parish or district; and they shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, sewer,

drain, or place, or to construct a proper sewer or drain for the discharge of such filth, water, matter, or thing, or to do such other works as the case may require; and if the person to whom such notice is given, fail to comply therewith, the vestry or board shall execute such works as may be necessary for the abatement of such nuisance, and may recover the expenses thereby incurred, from the owner of the premises in manner hereinafter mentioned: Provided always, that it shall be lawful for such vestry or board, where they think it reasonable, to defray all or any portion of such expenses, as expenses of sewerage are to be defrayed under this Act: Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided, or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorized shall be applicable to every such purchase as aforesaid.

Where works interfere with any ancient mill, &c. compensation to be made, or rights therein purchased.

LXXXVII. It shall be lawful for any vestry or district board, where they think fit, to cause the ditches at the sides of or across public roads and bye-ways and public footways to be filled up, and to substitute pipe or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from such roads and ways therinto, and from time to time to repair and amend the same; and the surface of land gained by filling up such ditches may, if the vestry or board so think fit and direct, be thrown into such roads and ways, and be repairable as part thereof, and be under the control of the surveyors of the highways, or other person in charge of such roads, bye-ways, or footways.

Power to vestries and district boards to fill up ditches, by the side of roads, and substitute pipes.

CCXII. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a license in writing first had and obtained from the clerk or surveyor of the vestry or district board of the parish or district in which such street is situate; and every such license shall state the place where and the purpose for which such hoard, or fence, scaffold, or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

No hoard to be erected without license from vestry or district board.



If hoard be erected, or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed.

CXXIII. If any person erect or set up in any street any hoard or fence or scaffold, for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purposes of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a license from the vestry or district board, or do any such act as aforesaid in any other manner than as permitted by such license, or continue the same beyond the time stated in such license, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall, for every such offence, forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such inclosure to be removed and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges, and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand.

\* \* \* \* \*

Vestries and district boards to be the local authorities to execute the nuisances removal Acts.

CXXXIV. Every vestry and district board under this Act shall execute, within their respective parish or district, all the duties and powers exercisable under the Nuisances Removal and Diseases Prevention Act, 1848, and the Nuisances Removal and Diseases Prevention Act, 1849, by any commissioners or other body, or any officers having under any Act powers of cleansing, and shall be the local authority to execute any Act passed or to be passed in the present session amending or repealing the said Acts or either of them.

\* \* \* \* \*

## 20 VICT. CAP. 19.

*An Act to provide for the Relief of the Poor in extra-parochial places.* [21st March, 1857.]

I. After the thirty-first day of December one thousand eight hundred and fifty-seven, every place entered separately in the report of the registrar-general on the last census which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall, for all the purposes of the assessment to the poor rate, the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such place or over the greater part thereof shall appoint overseers of the poor therein; and with respect to any other place being or reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein, notwithstanding anything contained in the hundred and first chapter of the statute passed in the sessions of parliament of the seventh and eighth years of her present Majesty.

All extra-parochial places, where no poor rate is levied, to be deemed parishes for relief of the poor, &c. and justices, having jurisdiction, to appoint overseers.

\* \* \* \* \*

## 21 &amp; 22 VICT. CAP. 98.

*An Act to amend the Public Health Act, 1848, and to make further Provision for the Local Government of Towns and populous Districts.* [2nd August, 1858.]

\* \* \* \* \*

XXVIII. Every local board may, with the consent of the local board of any adjoining district, or with the consent of any adjoining place maintaining its own poor, do and execute in such adjoining district or place all or any of such works and things as the local board may do and execute within their own district, and upon such terms as to payment or otherwise as may be agreed upon between such local board and the local board of the adjoining district, or the local authority under the Nuisance Removal Act, 1855, in and for such adjoining place; and any sums agreed to be paid by the local board of

Power to local board to execute works in adjoining place

the adjoining district, in pursuance of this section, shall be payable out of the rates leviable under the Public Health Act, 1848, and this Act; and any sums agreed to be paid by such local authority shall be payable out of the same rates as the expenses of executing the said Nuisance Removal Act; and the consent of any such place to any work or thing proposed to be done under this section shall be signified in the same manner in which the consent of a place to the adoption of this Act is hereinbefore required to be signified; and where the expenses of any such work or thing would, if the same had been executed in a district under the powers of this Act, have been recoverable from the owners or occupiers, such expenses shall be recoverable by the local board or local authority of the district or place respectively from such owners or occupiers.

\* \* \* \* \*

Provision  
for obtaining  
order for  
cleansing  
foul and  
offensive  
water-  
courses or  
open ditches  
lying near  
to or forming  
the bound-  
aries of  
districts.

XXXI. In case any watercourse or open ditch lying near to or forming the boundary between the district of any local board and any adjoining parish or place shall be foul and offensive, so as injuriously to affect the district of such local board, any justice of the peace for the county, city, or borough in which such adjoining parish or place may be situate may, on the application of such local board, summon the local authority for the purposes of the Nuisances Removal Act, 1855, of such adjoining parish or place, to appear before the justices of the same county, city, or borough, to show cause why an order should not be made by the said justices for cleansing such watercourse or open ditch and for executing such permanent or other structural works as may appear to such justices to be necessary; and such justices, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such justices shall seem reasonable; and any sums ordered to be paid by any justices in pursuance of this section shall be a charge upon and be payable out of the poor rates of such adjoining parish or place, as if the same were legally incurred in the relief of the poor of such parish or place, and in default of payment may be levied upon the goods and chattels of such overseers by distress and sale thereof.

## 23 &amp; 24 VICT. CAP. 77.

*An Act to amend the Acts for the Removal of Nuisances  
and the Prevention of Diseases.* [6th August, 1860.]

WHEREAS the provisions of "The Nuisances Removal Act 18 & 19 Vict. for England, 1855," and "The Diseases Prevention Act, cc. 121 and 116, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

*Nuisances Removal.*

I. Section three, section six, section seven, and section nine of the said "Nuisances Removal Act for *England*, 1855," shall be repealed: Provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual, as if this Act had not been passed.

Sections 3,  
6, 7, and 9 of  
18 & 19 Vict  
c. 121,  
repealed.

II. The following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the districts hereunder stated in *England*:

Local au-  
thority to  
execute the  
Nuisances  
Removal  
Act.

In any place within which the Public Health Act is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of *London* and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being, and except in the city of *Oxford* and borough of *Cambridge*, where the local authority shall be the commissioners acting in execution of the local improvement Acts in force respectively in the said city and borough :

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners :

In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor for such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

Highway board or nuisances removal committees now subsisting may be continued so long as they employ sanitary inspectors.

III. Provided, that in any place where a highway board or "The Nuisances Removal Committee" chosen by the vestry in pursuance of the said Act is subsisting, and at the time of the passing of this Act employs or joins with other local authorities in employing a sanitary inspector or inspectors, such highway board or nuisances removal committee may continue to act, and a like committee may be annually chosen by the vestry for such place in the same manner as if this Act had not been passed ; but in case in any year the nuisances removal committee be not chosen for such place in manner provided by the said Act, or if the highway board or committee now subsisting or hereafter chosen fail for two months in any year to appoint or employ a sanitary inspector or inspectors, the authority of such highway board or committee shall cease, and no like committee shall be chosen for such place, and the same body or persons shall thenceforth be the local authority for the place as if no such highway board or committee had been appointed therein.

How expenses of local autho-

IV. All charges and expenses incurred by the local authority in executing the said Nuisances Removal Act, and not

recovered as therein provided, shall be defrayed as follows; <sup>rity to be</sup> ~~defrayed.~~  
to wit,

Out of general district rates where the local authority is a local board of health :

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council :

Provided always, that in the city of *Oxford* and borough of *Cambridge* such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable :

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act :

Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor :

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority :

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "The Nuisances Removal Committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof :

Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board

shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof:

So much of any such charges and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.

Board of guardians may appoint committees for particular parishes.

V. Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under section five of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority; and every committee so appointed shall have the full power of executing the said Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee: Provided that where any one such committee is appointed for all the places for which the board is the local authority its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed.

Saving for the vestries and district

VI. Provided also, that as regards the metropolis, the vestries and district boards under the Act of the session holden

in the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue and be the local authorities for the execution of the said Nuisances Removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed.

VII. All wells, fountains, and pumps provided under section fifty of "The Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under this Act for such place, who shall from time to time cause to be kept in good repair and condition and free from pollution all wells, fountains, and pumps vested in them under this Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

boards of  
the metro-  
polls.

Wells, &c.  
belonging to  
any place  
vested in  
local authority, &c.

VIII. If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding five pounds for such offence, and a further sum not exceeding twenty shillings for every day during which such offence is continued after written notice from the local authority in relation thereto; but nothing herein contained shall extend to any offence provided against by section twenty-three of the said "Nuisances Removal Act."

Penalty for  
fouling  
water.

IX. Local authorities under this Act may, for the purposes of the Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors.

Appointment  
of inspector  
of nuisances.

### *Diseases Prevention.*

X. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting a local authority for the execution of the same Act, or providing for

Sections 2  
and 3 of  
18 & 19 Vict.  
c. 116,  
repealed.



the expenses of the execution thereof, except those contained in the eighteenth and nineteenth of *Victoria*, chapter one hundred and twenty, the *Metropolis Local Management Act*, shall be repealed.

Guardians  
and over-  
seers of the  
poor to be  
the local  
authorities  
for executing  
Diseases  
Prevention  
Act.

XI. The board of guardians for every union, or parish not within an union, in *England* shall be the local authority for executing the said *Diseases Prevention Act* in every place within their respective unions and parishes, and in every parish and place in *England* not within a union, and for which there is no board of guardians, the overseers of the poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place; provided that every such board of guardians shall, for the execution of the said Act for the prevention of diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said *Nuisances Removal Act*; provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed; provided, moreover, that in respect of any place where, under this Act, the local authority for executing the *Nuisances Removal Act* is any other body than the board of guardians or the overseers of the poor, the privy council, if it see fit, may, in the manner provided for the exercise of its powers under the *Public Health Act*, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the *Diseases Prevention Act*; provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "*Diseases Prevention*

Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

XII. It shall be lawful for the local authority for executing the said " Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expense thereof shall be deemed to be an expense incurred in executing the said Act.

Local authorities may provide carriages for conveyance of infected persons.

XIII. Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under section twelve of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: Provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under section eleven of the said Act: Provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices: Any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under section twelve of the said

Justices, on the application of householders, may order the removal of nuisances.

Nuisances Removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

Guardians may procure sanitary reports and pay for the same.

XIV. The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Interpretation of terms.

XV. The several words used in this Act shall be construed in the same manner as is declared with reference to the same words in the above-cited Act, termed "The Nuisances Removal Act for *England*, 1855," and all the provisions therein, and in "The Diseases Prevention Act, 1855," contained, shall respectively be applicable to this Act, except so far as they shall be hereby repealed, or be inconsistent with anything herein provided.

Justices not incapable of acting by being members of bodies to execute Nuisances Removal Act.

XVI. No justice of the peace shall, unless objected to at the hearing of any complaint or charge, be deemed incapable of acting in cases other than appeals arising under the said Nuisances Removal Act by reason of his being a member of any body hereby declared to be the local authority to execute the said Act, or by reason of his being a contributor, or liable to contribute, to any rate or fund out of which it is hereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

## 2. INSTRUCTIONS.

1.—*Notification of late General Board of Health as to the Removal of Nuisances.*

The general board of health, being required to furnish information for the removal of nuisances and preventible causes of disease, desires to call attention to the provisions of the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), which has superseded the previous Acts on the same subject in England:—

1. Any premises in such a state as to be a nuisance or injurious to health may be ordered by two justices in petty sessions or by a stipendiary magistrate to be made safe and habitable, to be paved, cleansed, whitewashed, disinfected, or purified, and sufficient privy accommodation, means of drainage and ventilation, to be provided; and while any house or building is rendered by a nuisance unfit for human habitation, in the opinion of the justices, the using of it for that purpose may be prohibited.

2. Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit so foul as to be a nuisance or injurious to health may be ordered to be drained, emptied, cleansed, filled up, amended, or removed, and a substitute provided.

3. Any animal so kept as to be a nuisance or injurious to health may be ordered to be kept in a cleanly and wholesome state, and, if that be impossible, the animal may be removed.

4. Any accumulation or deposit which is a nuisance or injurious to health may be ordered to be carried away.

Notice of a nuisance may be given by any person aggrieved thereby, or by any of the following persons:—the sanitary inspector or any paid officer under the said local authority, two or more inhabitant householders of the pariah or place to which the notice relates, the relieving officer of the union or parish, any constable or any officer of the constabulary or police force of the district or place, and, in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses.

The notice is to be given to one of the local authority in the following list, and if more than one of them have jurisdiction in the place where the nuisance arises the authority first mentioned is the one to which notice must be addressed:—

1. Where the public health Act is in force, the local board of health.
2. In corporate towns (except the city of London, Oxford, and Cambridge), the town council.
3. In the city of London, the commissioners of sewers; and in Oxford and Cambridge, the improvement commissioners.

4. Where local improvement Acts are in force, the commissioners or trustees for the execution of such Acts.
5. The highway board if there be one.
6. The nuisance removal committee, which ought to be chosen by the vestry under the Act of 1855 where none of the above-mentioned authorities exist.
7. The board of inspectors for lighting and watching under 3 & 4 W. 4, c. 90, acting with the surveyors of highways.
8. Where none of the above-mentioned are to be found, the guardians and oversees of the poor and the surveyors of the highways in and for the place.

In the metropolis the vestries and district boards to be elected under the Metropolis Local Management Act will, on and after the 1st January, 1856, be the authority to whom notice and complaints must be addressed.

The local authority are bound to appoint or join with other local authorities in appointing a sanitary inspector, and they have power of entry into the premises on which the alleged nuisance is situated for themselves or their officers, and, on being satisfied that the complaint is well founded, are bound to bring it before a justice, on whose summons the person causing the nuisance, or, if he cannot be found or ascertained, the owner or occupier of the premises where it exists, will be summoned before two justices, by whom the complaint will be inquired into, and an order made. Even if the particular nuisance complained of have been removed before proceedings are taken, the local authority, if they have reasons for believing that it is likely to recur, may summon the offender, and the justices may in such a case make an order, not for abatement, but for prohibition, or they may combine an order for abatement with an order for prohibition, and direct the works necessary to prevent a recurrence of the cause of complaint. The order of the justices may extend to structural works, but in that case the Act gives an appeal as it does against any order of prohibition.

The duty and cost of removing the nuisance are thrown in the first place, on the person causing it, and, if he cannot be found, on the owner or occupier in the next place, according as the nuisance is one caused by act or default of one or the other.

It is obvious that there are nuisances which no attention on an occupier's part can prevent, if an owner have not provided certain appliances; and, on the other hand, nuisances for the prevention of which the utmost care or forethought of an owner is unavailing, if the occupier be careless or perverse.

When neither the person causing the nuisance, the owner, nor the occupier can be got at, the duty of removing the nuisance devolves on the local authority, and the cost must be defrayed out of the funds administered by them.

Any person not obeying an order of abatement of a nuisance is liable to a penalty of not more than ten shillings per

day during his default; and any person knowingly and wilfully acting contrary to the order of prohibition is liable to a penalty of not more than twenty shillings per day during such contrary action, and the local authority may themselves remove or abate the nuisance, and charge the cost to the person on whom the order has been made.

Meat, vegetables, flour, &c. exposed for sale, or on their way to or in the course of being slaughtered, dressed, or prepared for sale or use, or landed from any ship, may be examined by the sanitary inspector, and if they appear to him unfit for human food may be seized and brought before a justice, who may make order therein.

The local authorities may direct complaint to be made before justices of nuisances arising from noxious trades or manufactures, and of any house which is so overcrowded by inhabitants consisting of more than one family as to be dangerous or prejudicial to their health.

The local authority may lay down and keep in repair a sewer or other structure along the course of any ditch, gutter, drain, or watercourse used or partly used for the conveyance of sewage, and may assess parties using the ditch as a means of sewerage to the expense, either in one sum or by instalments or an annual payment.

All persons allowing gas washing to flow into any place for water are rendered liable to heavy penalties. The local authority may direct any proceedings at law or in equity in cases coming within the powers of this Act.

The general board would strongly urge upon the clergy, employers of labour, and others whose avocations bring them into contact with the classes of the population most exposed to suffer from the nuisances to which this Act refers, the duty of informing themselves and diffusing information as to the provisions of the Act, and of doing all they can to promote the election of committees for its execution, especially in rural parishes.

By order of the board,

(Signed) T. TAYLOR,

August, 1855.

Secretary.

2.—*Instructions of late General Board of Health as to Proceedings for the Removal of Nuisances.*

General Board of Health,  
Whitehall.

Sir,

In reply to your letter I am directed by the president of the general board of health to recommend you to give notice in clear and concise terms of the nuisance of which you complain to the local authority which has jurisdiction in the parish or place in which the nuisance exists, under the provisions of the Nuisance Removal Act, 1855 (18 & 19 Vict. c. 121).

It will be the duty of that local authority, or of the committee of their own body which they may appoint, to ascertain, by the inspection of their sanitary inspector, whether the nuisance of which you complain exists, and can be removed under the provisions of the Act; and they have under the 11th section of the Act, the power of entry for themselves or any of their officers on any private premises in which they or their officers have reasonable grounds for believing that a nuisance exists.

In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and (although the actual nuisance complained of may have since been removed or discontinued) is in their opinion likely to recur or to be repeated on the same premises, they must cause complaint thereof to be made before a magistrate; and such magistrate shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

By their order the justices may require the abatement of any of the nuisances noticed in the 13th section; and they may further issue a prohibitive order against any recurrence of such nuisance.

Any person not obeying the said order for abatement will, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every offence to a penalty of not more than ten shillings per day during his default; and any person knowingly and wilfully acting contrary to any such order of prohibition will be liable for every offence to a penalty not exceeding twenty shillings per day during such contrary action. The local authority may, under the powers of entry given by the Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person on whom the order is made, as provided in the Act.

As you may have some doubt as to the local authority to which you should give notice, I am directed to enumerate the

bodies which are empowered to execute the Act. If more than one of the bodies named in the following list have jurisdiction in the place where the nuisance exists the first-mentioned is the one to which notice must be addressed :—

1. Where the public health Act is in force, the local board of health.
2. In corporate towns (except the city of London, Oxford, and Cambridge), the town council.
3. In the city of London, the commissioners of sewers; and in Oxford and Cambridge, the improvement commissioners.
4. Where local improvement Acts are in force, the commissioners or trustees for the execution of such Acts.
5. The highway board, if there be one.
6. The nuisance removal committee, which ought to be chosen by the vestry under the Act of 1855, where none of the above-mentioned authorities exist.
7. The board of inspectors for lighting and watching under 3 & 4 W. 4. c. 90, acting with the surveyors of highways.
8. Where none of the above-mentioned are to be found, the guardians and overseers of the poor and the surveyors of the highways in and for the place.

In the last case I am to point out that the word "place," as interpreted in the Act, does not include "union." The local authority consists therefore in this case of the guardians in and for the parish (or other parochial division for which guardians may be elected), with the overseers and surveyors of highways.

In the metropolis the vestries and district boards to be elected under the Metropolis Local Management Act will, on and after the 1st January, 1856, be the authority to whom notice and complaints must be addressed.

Your notice must be given to the committee appointed by the local authority to receive notices, or may be brought in any way you think proper to the attention of the local authority.

I am, sir, your obedient servant,  
T. TAYLOR, *Secretary*.

3.—*Letter of Poor Law Board to Boards of Guardians relating to the Act 18 & 19 Vict. c. 121.*

Sir,

Poor Law Board, Whitehall,  
5th October, 1855.

The poor law board having received various inquiries from boards of guardians as to their powers in reference to the appointments of inspectors of nuisances, and other proceedings for the removal of nuisances, deem it desirable to state that the statutes 11 & 12 Vict. c. 123, and



19 & 13 Vict. c. 111, have been entirely repealed so far as they relate to England by the statute 18 & 19 Vict. c. 121, which received the royal assent on the 14th August last.

The powers conferred upon boards of guardians in unions, and the obligations imposed upon them and their officers by the two first-mentioned Acts have therefore ceased, except as regards proceedings commenced or taken under those Acts, and not completed at the time of their repeal. These may be proceeded with under the authority of the Acts under which they were originally commenced.

The new Act confers no powers and imposes no duties upon the boards of guardians in unions, but requires that its provisions shall be carried into execution by the local authorities specified in the Act. In section 3, the different bodies who will constitute such local authorities are defined, and there are no terms in that section which will apply to the board of guardians of a union.

Those local authorities are the following:—

In any place within which the public health Act is or shall be in force, “the local board of health:”

In any other place wherein a council exists or shall exist, “the mayor, aldermen, and burgesses by the council,” except in the city of London and the liberties thereof, where the local authority shall be “the commissioners of sewers for the time being;” and except in the city of Oxford and borough of Cambridge, where the local authority shall be “the commissioners acting in execution of the local improvement Acts” in force respectively in the said city and borough:

In any place in which there is no local board of health, or council, and where there are or shall be trustees or commissioners under an improvement Act, “such trustees or commissioners:”

In any place in which there is no such local board of health, nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, “that board:”

In any place where there is no such local board of health, council, body of trustees, or commissioners, nor highway board, a committee appointed for carrying the Act into execution, by the name of “the nuisances removal committee:”

In any place wherein there is no such local board of health, council, body of trustees, or commissioners, highway board, or committee, and wherein there is or shall be “a board of inspectors for lighting and watching” under the Act 3 & 4 W. 4, c. 90, that board with the surveyors of the highways:

In any place where there is no such local board of health, council, board of trustees, or commissioners, nor highway board, nor such committee, nor board of inspectors

for lighting and watching, "the guardians and overseers of the poor, and the surveyors of the highways" in and for such place.

The board desire, however, to add, that under section 10 of the Act, it is competent to any relieving officer who may be aware that a nuisance exists within his district which is injurious to health, and falls within the description given by the statute, to give notice thereof to the local authority, in order that such authority may take cognizance of such nuisance, and cause, if they deem it requisite, the proper steps to be taken for its removal.

The nuisances to which the Act applies include—

Any premises in such a state as to be a nuisance or injurious to health.

- Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit, so foul as to be a nuisance or injurious to health.

Any animal so kept as to be a nuisance or injurious to health.

Any accumulation or deposit which is a nuisance or injurious to health.

The board request the board of guardians to communicate this information to the several relieving officers of their union.

I am, your obedient servant,

W. G. LUMLEY,

*Assistant Secretary.*

#### 4.—*Removal of Nuisances and Prevention of Diseases.*

Poor Law Board, Whitehall, S.W.  
10th October, 1860.

SIR,

I am directed by the Poor Law Board to bring under the notice of the Guardians the provisions of the act of the last session of parliament for amending the Acts for the Removal of Nuisances, and the Prevention of Diseases. The Act is the 23 & 24 Vict. c. 77.

By the statutes 18 & 19 Vict. cc. 116 and 121, the former passed for the Prevention of Diseases, and the latter for the Removal of Nuisances, the powers and obligations thereby created were conferred upon certain local authorities who were either designated or created by those Acts. The Boards of Guardians of Unions and Parishes were not among them. The Act of the last session, however, having made an alteration in this respect, and created the Guardians local authorities to execute those Acts in certain cases, it is necessary that their attention should be at once directed to this subject.

The Act has repealed the previous provisions which constituted the local authorities, and which prescribed the funds to be charged with their expenses, and has constituted those authorities afresh. Thus Local Boards of Health, Town Councils, Trustees or Commissioners under Improvement Acts, are to be the local authorities within their respective districts. But in any place where no such authority exists, the Board of Guardians of the Poor for such place, or of the Union comprising it, shall be such local authority; and where there is no such Board of Guardians the Overseers of the Poor shall act as such.

Section 3 preserves, however, those local authorities consisting of the Highway Boards and the Nuisances Removal Committees, chosen in pursuance of the Nuisances Removal Act of 1855, which at the time of the passing of the new Act, (which bears date the 6th August last,) employed, or had joined in employing, a sanitary Inspector, so long as they continue to employ such Inspector, and as regards the Nuisances Removal Committee, so long as it shall be annually chosen in the manner required by the Act of 1855.

It is therefore incumbent upon the Board of Guardians to ascertain, as speedily as practicable, whether there be any such local authority as that adverted to acting for their Parish or Union, or any part of it. If there be any local authority, as above explained, acting for the whole of their district, their obligation and authority under the statutes for the Removal of Nuisances will not at present arise; but if there be no such authority, or if it extend to a part only of their own district, they must act within the whole or the residue of their district, as the case may be, in pursuance of those statutes.

The Board cannot in this communication set out in detail the duties which will now devolve upon the Guardians, nor the powers which have been conferred upon them as such local authority, by the application of the former statutes to them; but the Guardians will no doubt refer to the various provisions contained in the statutes in question.

Section 4 of the new statute provides for the charges and expenses to be incurred by the local authorities in the Removal of Nuisances; and as regards Boards of Guardians, provides for five separate contingencies.

1. Where the Board of Guardians is the local authority for a whole Union.
2. Where it is such for two or more Parishes only, and not for all.
3. Where it is such for one Parish only in the Union.
4. Where it is such for part only of a Parish, together with the whole or part only of another Parish.
5. Where the Board of Guardians act for a Parish, and not for a Union.

The statute requires that the charges in all these cases shall be defrayed out of the Poor-rate of the place or places for

which those charges shall have been incurred. As regards the fourth case, the Board of Guardians are to apportion the expenses between the part of the Parish and the other Parish or place; and it is provided in the case where a part of a Parish is to be charged, that the expense incurred by the Board of Guardians shall be defrayed by an addition to the Poor-rate, and shall be raised and paid in like manner as money expended for the relief of the Poor.

By section 5 power is given to the Board of Guardians for a Union to appoint a Committee or Committees of its own body to act in one or more of the Parishes for which it is the local authority. This Committee shall have full power of executing the Act within its district, unless its power be expressly limited by the terms of its appointment.

The expenses of such Committee are to be defrayed out of the Poor-rates of the places for which it is appointed, and in the case of any such appointment the expenses incurred for the residue of the Union are required to be defrayed as the expenses of a Committee.

When a Committee is appointed for the whole district of the local authority, the charges are to be contributed and paid as if such Committee had not been appointed, that is, as it appears to the Board, by the Parish or Parishes on whose account the expenses shall have been incurred, and in the proportion in which the same shall have been incurred in or for the several Parishes or Places.

By section 9 the Board of Guardians are empowered to appoint or employ Inspectors of Nuisances, and to make such payments as they see fit for the remuneration and expenses of such Inspectors. Upon this clause the Board will observe that the Board of Guardians must determine how to apportion the salary of the Inspector of Nuisances, having regard to the previous rules prescribed by the Legislature. It will be necessary also that the Guardians should be careful to ascertain that the person appointed to act shall be legally competent to undertake the office. If, therefore, it be deemed advisable to appoint a Relieving Officer to be an Inspector of Nuisances, it will be necessary that an application should be made to this Board for their consent, in accordance with Art. 166 of the General Consolidated Order.

The new statute then proceeds to enact that the Board of Guardians shall be the local authority for executing the Diseases Prevention Act of 1855 within their district, and provides that their expenses shall be defrayed out of the common fund of the Union, or out of the Poor-rate of the Parish where the same is not in any Union.

But the Board of Guardians may appoint Committees for the purposes of this Act in like manner, and with the like authority, and subject to the same provisions as to their expenses, as is above provided in regard to the Committees to be appointed for the Removal of Nuisances.

The Privy Council may however, if they see fit, authorize any other local authority appointed for the Removal of Nuisances to be the authority for executing the Diseases Prevention Act in the place of the Board of Guardians.

It is necessary now to refer to two enactments calculated to be of much use to many Boards of Guardians. The first is contained in section 12, which enables them, where they are the authorities for executing the Diseases Prevention Act, to provide and maintain suitable carriages for the conveyance of sick and diseased persons residing within their locality to any hospital or other place of destination. The expense thereof is to be deemed an expense incurred in executing the said Act, and consequently will be chargeable upon the common fund in Unions. The Board think that the Legislature intended that this provision should not be limited to the period when the Board of Guardians are called upon to exercise their duties for the prevention of Diseases under an Order in Council, but that it should be of general application.

The other provision is contained in section 14, and enables the Guardians of any Union or Parish not within a Union to employ one of their Medical Officers to inquire and report upon the sanitary state of their Union or Parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Hitherto the Board of Guardians have not been able to obtain any sanitary report, except as regarded the poor in receipt of relief, unless through the voluntary and gratuitous communications of their Medical Officer. But henceforth they will be empowered to employ and remunerate him for the information which he can obtain and render to them in peculiar emergencies when this information may be of great value, either in dispelling unfounded alarms, or in stimulating to exertion for the repression of local epidemic diseases.

In conclusion, the Board desire to remark, that except so far as this last clause extends, the statute has no operation in regard to the Boards of Guardians in the Metropolis, inasmuch as it is expressly provided that the Vestries and District Boards appointed therein under the 18 & 19 Vict. c. 120, shall continue to be the local authorities for the Removal of Nuisances, and for the execution of "The Diseases Prevention Act, 1855."

The statute contains some few other clauses, but they have no particular reference to the Board of Guardians.

I am, your obedient Servant,

W. G. LUMLEY, *Assistant Secretary.*

To

*The Clerk to the Board of Guardians.*

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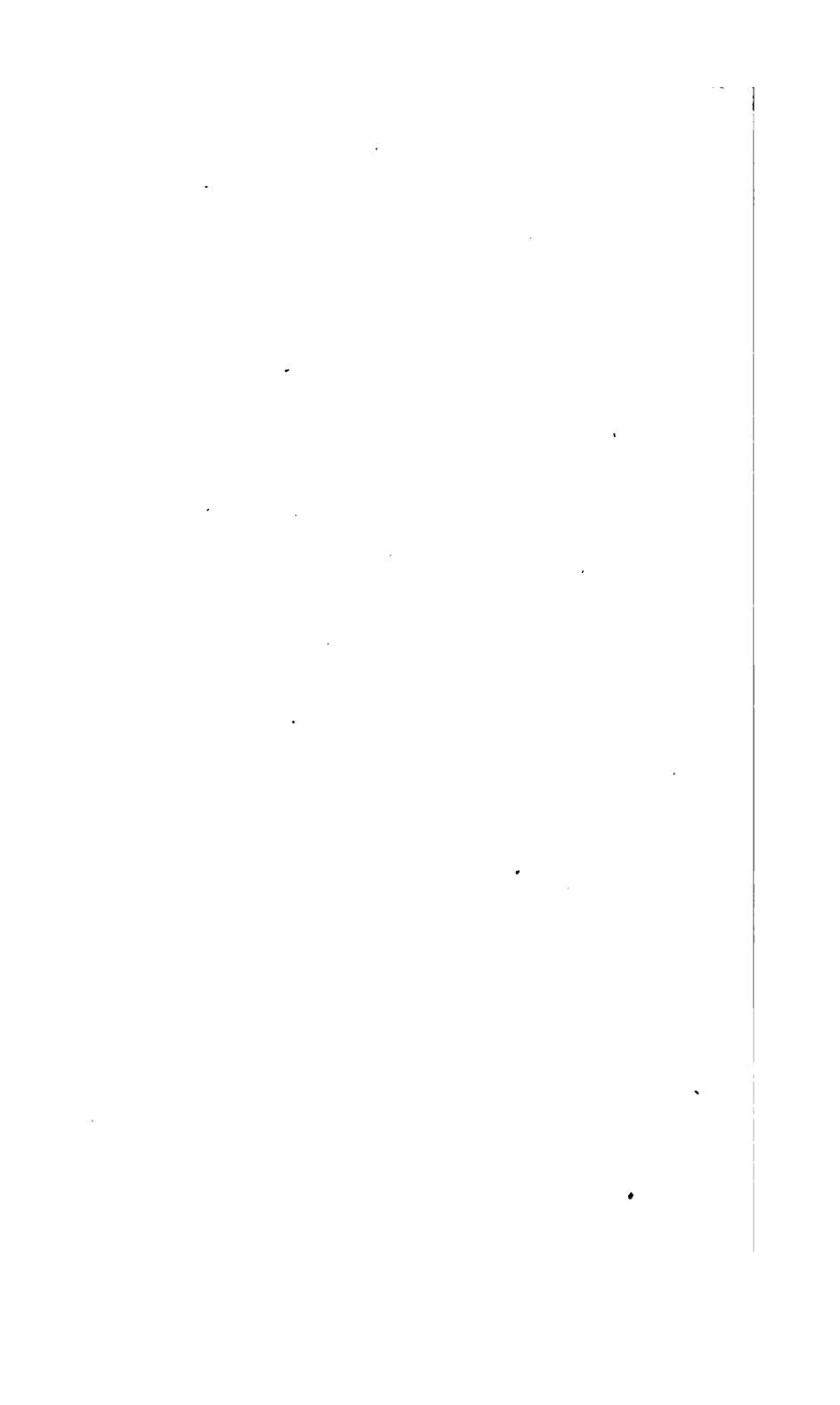
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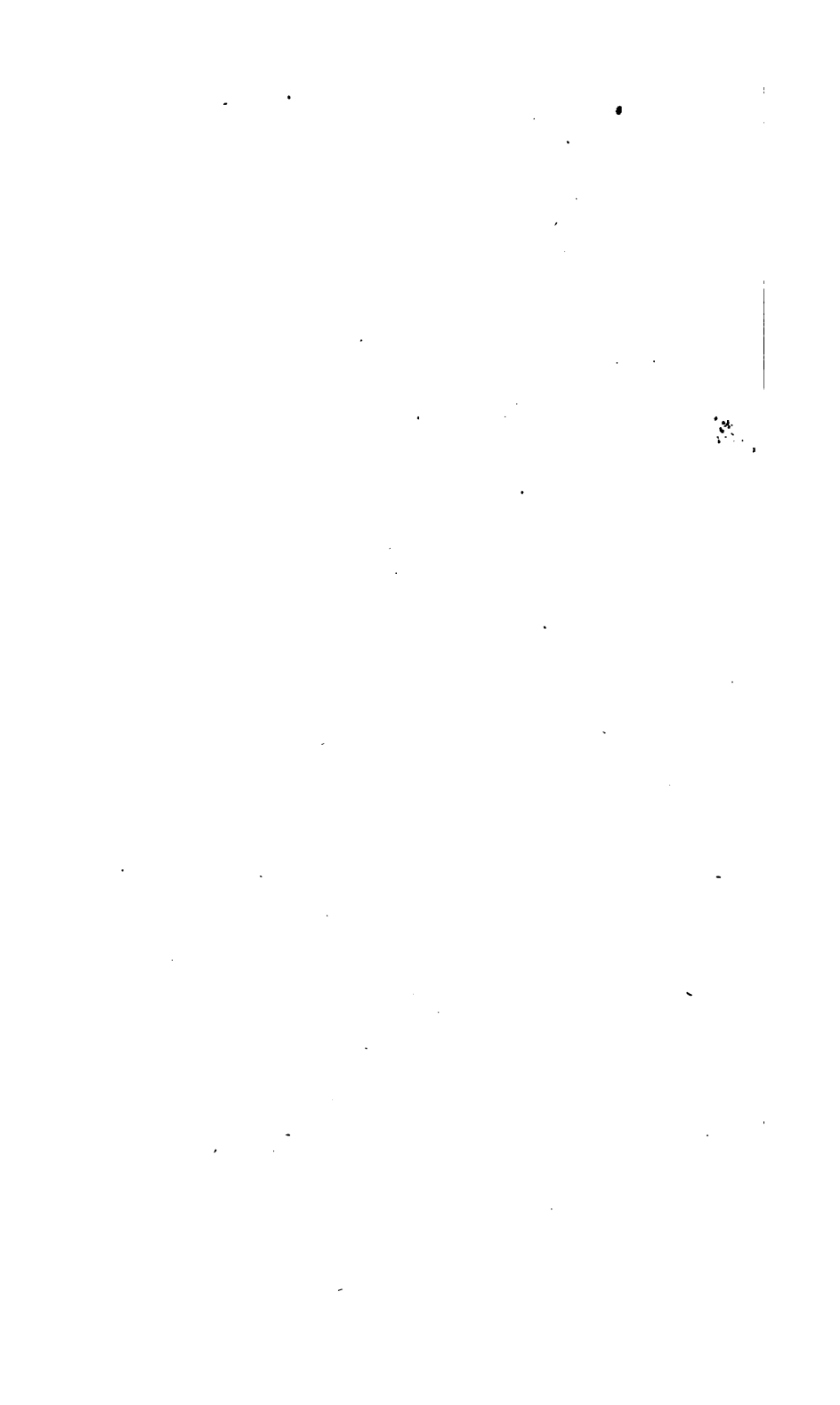
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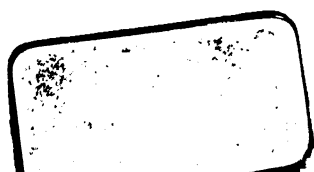
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